

AMENDMENT TO H.R. 975, AS REPORTED
OFFERED BY _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Bankruptcy Abuse
3 Prevention and Consumer Protection Act of 2003”.

4 TITLE I—NEEDS-BASED
5 BANKRUPTCY

6 SEC. 101. CONVERSION.

7 Section 706(c) of title 11, United States Code, is
8 amended by inserting “or consents to” after “requests”.

9 SEC. 102. DISMISSAL OR CONVERSION.

10 (a) IN GENERAL.—Section 707 of title 11, United
11 States Code, is amended—

12 (1) by striking the section heading and insert-
13 ing the following:

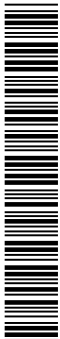
14 “§ 707. Dismissal of a case or conversion to a case
15 under chapter 13”;

16 and

17 (2) in subsection (b)—

18 (A) by inserting “(1)” after “(b)”; and

19 (B) in paragraph (1), as redesignated by
20 subparagraph (A) of this paragraph—



1 (i) in the first sentence—

2 (I) by striking “but not” and in-
3 serting “or”;

4 (II) by inserting “, or, with the
5 debtor’s consent, convert such a case
6 to a case under chapter 13 of this
7 title,” after “consumer debts”; and

8 (III) by striking “substantial
9 abuse” and inserting “abuse”; and

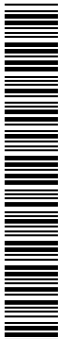
10 (ii) by striking the last sentence and
11 inserting the following:

12 “(2) In considering under paragraph (1) whether the
13 granting of relief would be an abuse of the provisions of
14 this chapter, the court shall consider whether—

15 “(A) under section 1325(b)(1), on the basis of
16 the current income of the debtor, the debtor could
17 pay an amount greater than or equal to 30 percent
18 of unsecured claims that are not considered to be
19 priority claims (as determined under subchapter I of
20 chapter 5); or

21 “(B) the debtor filed a petition for the relief in
22 bad faith.

23 “(6) Only the judge or United States trustee (or
24 bankruptcy administrator, if any) may file a motion under
25 section 707(b), if the current monthly income of the debt-



1 or, or in a joint case, the debtor and the debtor's spouse,
2 as of the date of the order for relief, when multiplied by
3 12, is equal to or less than—

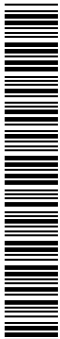
4 “(A) in the case of a debtor in a household of
5 1 person, the median family income of the applicable
6 State for 1 earner;

7 “(B) in the case of a debtor in a household of
8 2, 3, or 4 individuals, the highest median family in-
9 come of the applicable State for a family of the same
10 number or fewer individuals; or

11 “(C) in the case of a debtor in a household ex-
12 ceeding 4 individuals, the highest median family in-
13 come of the applicable State for a family of 4 or
14 fewer individuals, plus \$525 per month for each in-
15 dividual in excess of 4.

16 “(7)(A) No judge, United States trustee (or bank-
17 ruptcy administrator, if any), trustee, or other party in
18 interest may file a motion under paragraph (2) if the cur-
19 rent monthly income of the debtor and the debtor's spouse
20 combined, as of the date of the order for relief when multi-
21 plied by 12, is equal to or less than—

22 “(i) in the case of a debtor in a household of
23 1 person, the median family income of the applicable
24 State for 1 earner;



1 “(ii) in the case of a debtor in a household of
2 2, 3, or 4 individuals, the highest median family in-
3 come of the applicable State for a family of the same
4 number or fewer individuals; or

5 “(iii) in the case of a debtor in a household ex-
6 ceeding 4 individuals, the highest median family in-
7 come of the applicable State for a family of 4 or
8 fewer individuals, plus \$525 per month for each in-
9 dividual in excess of 4.

10 “(B) In a case that is not a joint case, current month-
11 ly income of the debtor’s spouse shall not be considered
12 for purposes of subparagraph (A) if—

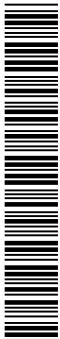
13 “(i)(I) the debtor and the debtor’s spouse are
14 separated under applicable nonbankruptcy law; or

15 “(II) the debtor and the debtor’s spouse are liv-
16 ing separate and apart, other than for the purpose
17 of evading subparagraph (A); and

18 “(ii) the debtor files a statement under penalty
19 of perjury—

20 “(I) specifying that the debtor meets the
21 requirement of subclause (I) or (II) of clause
22 (i); and

23 “(II) disclosing the aggregate, or best esti-
24 mate of the aggregate, amount of any cash or
25 money payments received from the debtor’s



1 spouse attributed to the debtor's current
2 monthly income.”.

3 (b) DEFINITION.—Section 101 of title 11, United
4 States Code, is amended by inserting after paragraph (10)
5 the following:

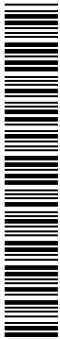
6 “(10A) ‘current monthly income’—

7 “(A) means the average monthly income
8 from all sources that the debtor receives (or in
9 a joint case the debtor and the debtor's spouse
10 receive) without regard to whether such income
11 is taxable income, derived during the 60-day pe-
12 riod ending on—

13 “(i) the last day of the calendar
14 month immediately preceding the date of
15 the commencement of the case if the debt-
16 or files the schedule of current income re-
17 quired by section 521(a)(1)(B)(ii); or

18 “(ii) the date on which current income
19 is determined by the court for purposes of
20 this title if the debtor does not file the
21 schedule of current income required by sec-
22 tion 521(a)(1)(B)(ii); and

23 “(B) includes any amount paid by any en-
24 tity other than the debtor (or in a joint case the
25 debtor and the debtor's spouse), on a regular



1 basis for the household expenses of the debtor
2 or the debtor's dependents (and in a joint case
3 the debtor's spouse if not otherwise a depend-
4 ent), but excludes benefits received under the
5 Social Security Act, payments to victims of war
6 crimes or crimes against humanity on account
7 of their status as victims of such crimes, and
8 payments to victims of international terrorism
9 (as defined in section 2331 of title 18) or do-
10 mestic terrorism (as defined in section 2331 of
11 title 18) on account of their status as victims
12 of such terrorism;”.

13 (c) UNITED STATES TRUSTEE AND BANKRUPTCY
14 ADMINISTRATOR DUTIES.—Section 704 of title 11, United
15 States Code, is amended—

16 (1) by inserting “(a)” before “The trustee
17 shall—”; and

18 (2) by adding at the end the following:

19 “(b)(1) With respect to a debtor who is an individual
20 in a case under this chapter—

21 “(A) the United States trustee (or the bank-
22 ruptcy administrator, if any) shall review all mate-
23 rials filed by the debtor and, not later than 10 days
24 after the date of the first meeting of creditors, file
25 with the court a statement as to whether the debt-



1 or's case would be presumed to be an abuse under
2 section 707(b); and

3 “(B) not later than 5 days after receiving a
4 statement under subparagraph (A), the court shall
5 provide a copy of the statement to all creditors.

6 “(2) The United States trustee (or bankruptcy ad-
7 ministrator, if any) shall, not later than 30 days after the
8 date of filing a statement under paragraph (1), either file
9 a motion to dismiss or convert under section 707(b) or
10 file a statement setting forth the reasons the United
11 States trustee (or the bankruptcy administrator, if any)
12 does not consider such a motion to be appropriate, if the
13 United States trustee (or the bankruptcy administrator,
14 if any) determines that the debtor's case should be pre-
15 sumed to be an abuse under section 707(b) and the prod-
16 uct of the debtor's current monthly income, multiplied by
17 12 is not less than—

18 “(A) in the case of a debtor in a household of
19 1 person, the median family income of the applicable
20 State for 1 earner; or

21 “(B) in the case of a debtor in a household of
22 2 or more individuals, the highest median family in-
23 come of the applicable State for a family of the same
24 number or fewer individuals.”.



1 (d) NOTICE.—Section 342 of title 11, United States
2 Code, is amended by adding at the end the following:

3 “(d) In a case under chapter 7 of this title in which
4 the debtor is an individual and in which the presumption
5 of abuse arises under section 707(b), the clerk shall give
6 written notice to all creditors not later than 10 days after
7 the date of the filing of the petition that the presumption
8 of abuse has arisen.”.

9 (e) NONLIMITATION OF INFORMATION.—Nothing in
10 this title shall limit the ability of a creditor to provide in-
11 formation to a judge (except for information commu-
12 nicated ex parte, unless otherwise permitted by applicable
13 law), United States trustee (or bankruptcy administrator,
14 if any), or trustee.

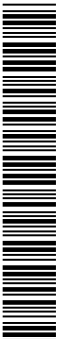
15 (f) DISMISSAL FOR CERTAIN CRIMES.—Section 707
16 of title 11, United States Code, is amended by adding at
17 the end the following:

18 “(c)(1) In this subsection—

19 “(A) the term ‘crime of violence’ has the mean-
20 ing given such term in section 16 of title 18; and

21 “(B) the term ‘drug trafficking crime’ has the
22 meaning given such term in section 924(c)(2) of title
23 18.

24 “(2) Except as provided in paragraph (3), after no-
25 tice and a hearing, the court, on a motion by the victim



1 of a crime of violence or a drug trafficking crime, may
2 when it is in the best interest of the victim dismiss a vol-
3 untary case filed under this chapter by a debtor who is
4 an individual if such individual was convicted of such
5 crime.

6 “(3) The court may not dismiss a case under para-
7 graph (2) if the debtor establishes by a preponderance of
8 the evidence that the filing of a case under this chapter
9 is necessary to satisfy a claim for a domestic support obli-
10 gation.”.

11 (g) CONFIRMATION OF PLAN.—Section 1325(a) of
12 title 11, United States Code, is amended—

13 (1) in paragraph (5), by striking “and” at the
14 end;

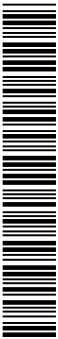
15 (2) in paragraph (6), by striking the period and
16 inserting a semicolon; and

17 (3) by inserting after paragraph (6) the fol-
18 lowing:

19 “(7) the action of the debtor in filing the peti-
20 tion was in good faith;”.

21 (i) SPECIAL ALLOWANCE FOR HEALTH INSUR-
22 ANCE.—Section 1329(a) of title 11, United States Code,
23 is amended—

24 (1) in paragraph (2) by striking “or” at the
25 end;



1 (2) in paragraph (3) by striking the period at
2 the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(4) reduce amounts to be paid under the plan
5 by the actual amount expended by the debtor to pur-
6 chase health insurance for the debtor (and for any
7 dependent of the debtor if such dependent does not
8 otherwise have health insurance coverage) if the
9 debtor documents the cost of such insurance and
10 demonstrates that—

11 “(A) such expenses are reasonable and
12 necessary;

13 “(B)(i) if the debtor previously paid for
14 health insurance, the amount is not materially
15 larger than the cost the debtor previously paid
16 or the cost necessary to maintain the lapsed
17 policy; or

18 “(ii) if the debtor did not have health in-
19 surance, the amount is not materially larger
20 than the reasonable cost that would be incurred
21 by a debtor who purchases health insurance,
22 who has similar income, expenses, age, and
23 health status, and who lives in the same geo-
24 graphical location with the same number of de-



1 pendents who do not otherwise have health in-
2 surance coverage; and

3 “(C) the amount is not otherwise allowed
4 for purposes of determining disposable income
5 under section 1325(b) of this title;

6 and upon request of any party in interest, files proof
7 that a health insurance policy was purchased.”.

8 (j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section
9 104(b) of title 11, United States Code, is amended by
10 striking “and 523(a)(2)(C)” each place it appears and in-
11 serting “523(a)(2)(C), 707(b), and 1325(b)(3)”.

12 (k) DEFINITION OF ‘MEDIAN FAMILY INCOME’.—
13 Section 101 of title 11, United States Code, is amended
14 by inserting after paragraph (39) the following:

15 “(39A) ‘median family income’ means for any
16 year—

17 “(A) the median family income both cal-
18 culated and reported by the Bureau of the Cen-
19 sus in the then most recent year; and

20 “(B) if not so calculated and reported in
21 the then current year, adjusted annually after
22 such most recent year until the next year in
23 which median family income is both calculated
24 and reported by the Bureau of the Census, to
25 reflect the percentage change in the Consumer



1 Price Index for All Urban Consumers during
2 the period of years occurring after such most
3 recent year and before such current year;”.

4 (k) CLERICAL AMENDMENT.—The table of sections
5 for chapter 7 of title 11, United States Code, is amended
6 by striking the item relating to section 707 and inserting
7 the following:

“707. Dismissal of a case or conversion to a case under chapter 11 or 13.”.

8 **SEC. 103. NOTICE OF ALTERNATIVES.**

9 Section 342(b) of title 11, United States Code, is
10 amended to read as follows:

11 “(b) Before the commencement of a case under this
12 title by an individual whose debts are primarily consumer
13 debts, the clerk shall give to such individual written notice
14 containing—

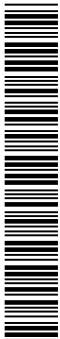
15 “(1) a brief description of—

16 “(A) chapters 7, 11, 12, and 13 and the
17 general purpose, benefits, and costs of pro-
18 ceeding under each of those chapters; and

19 “(B) the types of services available from
20 credit counseling agencies; and

21 “(2) statements specifying that—

22 “(A) a person who knowingly and fraudu-
23 lently conceals assets or makes a false oath or
24 statement under penalty of perjury in connec-



1 tion with a case under this title shall be subject
2 to fine, imprisonment, or both; and

3 “(B) all information supplied by a debtor
4 in connection with a case under this title is sub-
5 ject to examination by the Attorney General.”.

6 **SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING**
7 **TEST PROGRAM.**

8 (a) DEVELOPMENT OF FINANCIAL MANAGEMENT
9 AND TRAINING CURRICULUM AND MATERIALS.—The Di-
10 rector of the Executive Office for United States Trustees
11 (in this section referred to as the “Director”) shall consult
12 with a wide range of individuals who are experts in the
13 field of debtor education, including trustees who serve in
14 cases under chapter 13 of title 11, United States Code,
15 and who operate financial management education pro-
16 grams for debtors, and shall develop a financial manage-
17 ment training curriculum and materials that can be used
18 to educate debtors who are individuals on how to better
19 manage their finances.

20 (b) TEST.—

21 (1) SELECTION OF DISTRICTS.—The Director
22 shall select 6 judicial districts of the United States
23 in which to test the effectiveness of the financial
24 management training curriculum and materials de-
25 veloped under subsection (a).



1 (2) USE.—For an 18-month period beginning
2 not later than 270 days after the date of the enact-
3 ment of this Act, such curriculum and materials
4 shall be, for the 6 judicial districts selected under
5 paragraph (1), used as the instructional course con-
6 cerning personal financial management for purposes
7 of section 111 of title 11, United States Code.

8 (c) EVALUATION.—

9 (1) IN GENERAL.—During the 18-month period
10 referred to in subsection (b), the Director shall
11 evaluate the effectiveness of—

12 (A) the financial management training cur-
13 riculum and materials developed under sub-
14 section (a); and

15 (B) a sample of existing consumer edu-
16 cation programs such as those described in the
17 Report of the National Bankruptcy Review
18 Commission (October 20, 1997) that are rep-
19 resentative of consumer education programs
20 carried out by the credit industry, by trustees
21 serving under chapter 13 of title 11, United
22 States Code, and by consumer counseling
23 groups.

24 (2) REPORT.—Not later than 3 months after
25 concluding such evaluation, the Director shall sub-



1 mit a report to the Speaker of the House of Rep-
2 resentatives and the President pro tempore of the
3 Senate, for referral to the appropriate committees of
4 the Congress, containing the findings of the Director
5 regarding the effectiveness of such curriculum, such
6 materials, and such programs and their costs.

7 **SEC. 105. CREDIT COUNSELING.**

8 (d) DEBTOR'S DUTIES.—Section 521 of title 11,
9 United States Code, is amended—

10 (1) by inserting “(a)” before “The debtor
11 shall—”; and

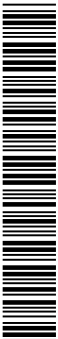
12 (2) by adding at the end the following:

13 “(b) In addition to the requirements under subsection
14 (a), a debtor who is an individual shall file with the
15 court—

16 “(1) a certificate from the approved nonprofit
17 budget and credit counseling agency that provided
18 the debtor services under section 109(h) describing
19 the services provided to the debtor; and

20 “(2) a copy of the debt repayment plan, if any,
21 developed under section 109(h) through the ap-
22 proved nonprofit budget and credit counseling agen-
23 cy referred to in paragraph (1).”.

24 (e) GENERAL PROVISIONS.—



1 (1) IN GENERAL.—Chapter 1 of title 11, United
2 States Code, is amended by adding at the end the
3 following:

4 **“§ 111. Nonprofit budget and credit counseling agen-**
5 **cies; financial management instructional**
6 **courses**

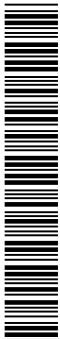
7 “(a) The clerk shall maintain a publicly available list
8 of—

9 “(1) nonprofit budget and credit counseling
10 agencies that provide 1 or more services described in
11 section 109(h) currently approved by the United
12 States trustee (or the bankruptcy administrator, if
13 any); and

14 “(2) instructional courses concerning personal
15 financial management currently approved by the
16 United States trustee (or the bankruptcy adminis-
17 trator, if any), as applicable.

18 “(b) The United States trustee (or bankruptcy ad-
19 ministrator, if any) shall only approve a nonprofit budget
20 and credit counseling agency or an instructional course
21 concerning personal financial management as follows:

22 “(1) The United States trustee (or bankruptcy
23 administrator, if any) shall have thoroughly reviewed
24 the qualifications of the nonprofit budget and credit
25 counseling agency or of the provider of the instruc-

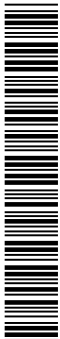


1 tional course under the standards set forth in this
2 section, and the services or instructional courses
3 that will be offered by such agency or such provider,
4 and may require such agency or such provider that
5 has sought approval to provide information with re-
6 spect to such review.

7 “(2) The United States trustee (or bankruptcy
8 administrator, if any) shall have determined that
9 such agency or such instructional course fully satis-
10 fies the applicable standards set forth in this section.

11 “(3) If a nonprofit budget and credit counseling
12 agency or instructional course did not appear on the
13 approved list for the district under subsection (a)
14 immediately before approval under this section, ap-
15 proval under this subsection of such agency or such
16 instructional course shall be for a probationary pe-
17 riod not to exceed 6 months.

18 “(4) At the conclusion of the applicable proba-
19 tionary period under paragraph (3), the United
20 States trustee (or bankruptcy administrator, if any)
21 may only approve for an additional 1-year period,
22 and for successive 1-year periods thereafter, an
23 agency or instructional course that has dem-
24 onstrated during the probationary or applicable sub-



1 sequent period of approval that such agency or in-
2 structional course—

3 “(A) has met the standards set forth under
4 this section during such period; and

5 “(B) can satisfy such standards in the fu-
6 ture.

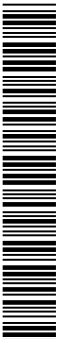
7 “(5) Not later than 30 days after any final de-
8 cision under paragraph (4), an interested person
9 may seek judicial review of such decision in the ap-
10 propriate district court of the United States.

11 “(c)(1) The United States trustee (or the bankruptcy
12 administrator, if any) shall only approve a nonprofit budg-
13 et and credit counseling agency that demonstrates that it
14 will provide qualified counselors, maintain adequate provi-
15 sion for safekeeping and payment of client funds, provide
16 adequate counseling with respect to client credit problems,
17 and deal responsibly and effectively with other matters re-
18 lating to the quality, effectiveness, and financial security
19 of the services it provides.

20 “(2) To be approved by the United States trustee (or
21 the bankruptcy administrator, if any), a nonprofit budget
22 and credit counseling agency shall, at a minimum—

23 “(A) have a board of directors the majority of
24 which—

25 “(i) are not employed by such agency; and



1 “(ii) will not directly or indirectly benefit
2 financially from the outcome of the counseling
3 services provided by such agency;

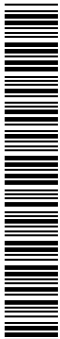
4 “(B) if a fee is charged for counseling services,
5 charge a reasonable fee, and provide services without
6 regard to ability to pay the fee;

7 “(C) provide for safekeeping and payment of
8 client funds, including an annual audit of the trust
9 accounts and appropriate employee bonding;

10 “(D) provide full disclosures to a client, includ-
11 ing funding sources, counselor qualifications, pos-
12 sible impact on credit reports, and any costs of such
13 program that will be paid by such client and how
14 such costs will be paid;

15 “(E) provide adequate counseling with respect
16 to a client’s credit problems that includes an anal-
17 ysis of such client’s current financial condition, fac-
18 tors that caused such financial condition, and how
19 such client can develop a plan to respond to the
20 problems without incurring negative amortization of
21 debt;

22 “(F) provide trained counselors who receive no
23 commissions or bonuses based on the outcome of the
24 counseling services provided by such agency, and
25 who have adequate experience, and have been ade-



1 quately trained to provide counseling services to in-
2 dividuals in financial difficulty, including the mat-
3 ters described in subparagraph (E);

4 “(G) demonstrate adequate experience and
5 background in providing credit counseling; and

6 “(H) have adequate financial resources to pro-
7 vide continuing support services for budgeting plans
8 over the life of any repayment plan.

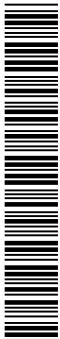
9 “(d) The United States trustee (or the bankruptcy
10 administrator, if any) shall only approve an instructional
11 course concerning personal financial management—

12 “(1) for an initial probationary period under
13 subsection (b)(3) if the course will provide at a
14 minimum—

15 “(A) trained personnel with adequate expe-
16 rience and training in providing effective in-
17 struction and services;

18 “(B) learning materials and teaching
19 methodologies designed to assist debtors in un-
20 derstanding personal financial management and
21 that are consistent with stated objectives di-
22 rectly related to the goals of such instructional
23 course;

24 “(C) adequate facilities situated in reason-
25 ably convenient locations at which such instruc-

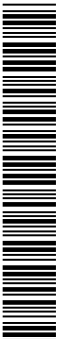


1 tional course is offered, except that such facili-
2 ties may include the provision of such instruc-
3 tional course by telephone or through the Inter-
4 net, if such instructional course is effective; and

5 “(D) the preparation and retention of rea-
6 sonable records (which shall include the debt-
7 or’s bankruptcy case number) to permit evalua-
8 tion of the effectiveness of such instructional
9 course, including any evaluation of satisfaction
10 of instructional course requirements for each
11 debtor attending such instructional course,
12 which shall be available for inspection and eval-
13 uation by the Executive Office for United
14 States Trustees, the United States trustee (or
15 the bankruptcy administrator, if any), or the
16 chief bankruptcy judge for the district in which
17 such instructional course is offered; and

18 “(2) for any 1-year period if the provider there-
19 of has demonstrated that the course meets the
20 standards of paragraph (1) and, in addition—

21 “(A) has been effective in assisting a sub-
22 stantial number of debtors to understand per-
23 sonal financial management; and



1 “(B) is otherwise likely to increase sub-
2 stantially the debtor’s understanding of per-
3 sonal financial management.

4 “(e) The district court may, at any time, investigate
5 the qualifications of a nonprofit budget and credit coun-
6 seling agency referred to in subsection (a), and request
7 production of documents to ensure the integrity and effec-
8 tiveness of such agency. The district court may, at any
9 time, remove from the approved list under subsection (a)
10 a nonprofit budget and credit counseling agency upon
11 finding such agency does not meet the qualifications of
12 subsection (b).

13 “(f) The United States trustee (or the bankruptcy ad-
14 ministrator, if any) shall notify the clerk that a nonprofit
15 budget and credit counseling agency or an instructional
16 course is no longer approved, in which case the clerk shall
17 remove it from the list maintained under subsection (a).

18 “(g)(1) No nonprofit budget and credit counseling
19 agency may provide to a credit reporting agency informa-
20 tion concerning whether a debtor has received or sought
21 instruction concerning personal financial management
22 from such agency.

23 “(2) A nonprofit budget and credit counseling agency
24 that willfully or negligently fails to comply with any re-



1 quirement under this title with respect to a debtor shall
2 be liable for damages in an amount equal to the sum of—

3 “(A) any actual damages sustained by the debt-
4 or as a result of the violation; and

5 “(B) any court costs or reasonable attorneys’
6 fees (as determined by the court) incurred in an ac-
7 tion to recover those damages.”.

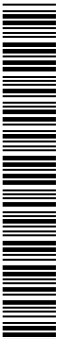
8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions for chapter 1 of title 11, United States Code,
10 is amended by adding at the end the following:

“111. Nonprofit budget and credit counseling agencies; financial management
instructional courses.”.

11 (f) LIMITATION.—Section 362 of title 11, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

14 “(i) If a case commenced under chapter 7, 11, or 13
15 is dismissed due to the creation of a debt repayment plan,
16 for purposes of subsection (c)(3), any subsequent case
17 commenced by the debtor under any such chapter shall
18 not be presumed to be filed not in good faith.

19 “(j) On request of a party in interest, the court shall
20 issue an order under subsection (c) confirming that the
21 automatic stay has been terminated.”.



1 **SEC. 106. SCHEDULES OF REASONABLE AND NECESSARY**
2 **EXPENSES.**

3 For purposes of section 707(b) of title 11, United
4 States Code, as amended by this Act, the Director of the
5 Executive Office for United States Trustees shall, not
6 later than 180 days after the date of enactment of this
7 Act, issue schedules of reasonable and necessary adminis-
8 trative expenses of administering a chapter 13 plan for
9 each judicial district of the United States.

10 **TITLE II—ENHANCED**
11 **CONSUMER PROTECTION**
12 **Subtitle A—Penalties for Abusive**
13 **Creditor Practices**

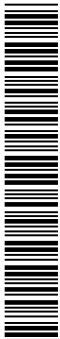
14 **SEC. 201. PRESERVATION OF CLAIMS AND DEFENSES UPON**
15 **SALE OF PREDATORY LOANS.**

16 Section 363 of title 11, United States Code, is
17 amended—

18 (1) by redesignating subsection (o) as sub-
19 section (p), and

20 (2) by inserting after subsection (n) the fol-
21 lowing:

22 “(o) Notwithstanding subsection (f), if a person pur-
23 chases any interest in a consumer credit transaction that
24 is subject to the Truth in Lending Act or any interest in
25 a consumer credit contract (as defined in section 433.1
26 of title 16 of the Code of Federal Regulations (January



1 1, 2002), as amended from time to time), and if such in-
2 terest is purchased through a sale under this section, then
3 such person shall remain subject to all claims and defenses
4 that are related to such consumer credit transaction or
5 such consumer credit contract, to the same extent as such
6 person would be subject to such claims and defenses of
7 the consumer had such interest been purchased at a sale
8 not under this section.”.

9 **SEC. 202. GAO STUDY AND REPORT ON REAFFIRMATION**
10 **AGREEMENT PROCESS.**

11 (a) STUDY.—The Comptroller General of the United
12 States shall conduct a study of the reaffirmation agree-
13 ment process that occurs under title 11 of the United
14 States Code, to determine the overall treatment of con-
15 sumers within the context of such process, and shall in-
16 clude in such study consideration of—

17 (1) the policies and activities of creditors with
18 respect to reaffirmation agreements; and

19 (2) whether consumers are fully, fairly, and
20 consistently informed of their rights pursuant to
21 such title.

22 (b) REPORT TO THE CONGRESS.—Not later than 18
23 months after the date of the enactment of this Act, the
24 Comptroller General shall submit to the President pro
25 tempore of the Senate and the Speaker of the House of



1 Representatives a report on the results of the study con-
2 ducted under subsection (a), together with recommenda-
3 tions for legislation (if any) to address any abusive or co-
4 ercive tactics found in connection with the reaffirmation
5 agreement process that occurs under title 11 of the United
6 States Code.

7 **Subtitle B—Priority Child Support**

8 **SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGA-** 9 **TION.**

10 Section 101 of title 11, United States Code, is
11 amended—

12 (1) by striking paragraph (12A); and

13 (2) by inserting after paragraph (14) the fol-
14 lowing:

15 “(14A) ‘domestic support obligation’ means a
16 debt that accrues before or after the date of the
17 order for relief in a case under this title, including
18 interest that accrues on that debt as provided under
19 applicable nonbankruptcy law notwithstanding any
20 other provision of this title, that is—

21 “(A) owed to or recoverable by—

22 “(i) a spouse, former spouse, or child
23 of the debtor or such child’s parent, legal
24 guardian, or responsible relative; or

25 “(ii) a governmental unit;



1 “(B) in the nature of alimony, mainte-
2 nance, or support (including assistance provided
3 by a governmental unit) of such spouse, former
4 spouse, or child of the debtor or such child’s
5 parent, without regard to whether such debt is
6 expressly so designated;

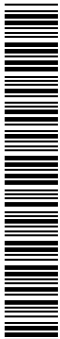
7 “(C) established or subject to establish-
8 ment before or after the date of the order for
9 relief in a case under this title, by reason of ap-
10 plicable provisions of—

11 “(i) a separation agreement, divorce
12 decree, or property settlement agreement;

13 “(ii) an order of a court of record; or

14 “(iii) a determination made in accord-
15 ance with applicable nonbankruptcy law by
16 a governmental unit; and

17 “(D) not assigned to a nongovernmental
18 entity, unless that obligation is assigned volun-
19 tarily by the spouse, former spouse, child of the
20 debtor, or such child’s parent, legal guardian,
21 or responsible relative for the purpose of col-
22 lecting the debt;”.



1 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**
2 **PORT OBLIGATIONS.**

3 Section 507(a) of title 11, United States Code, is
4 amended—

5 (1) by striking paragraph (7);

6 (2) by redesignating paragraphs (1) through
7 (6) as paragraphs (2) through (7), respectively;

8 (3) in paragraph (2), as so redesignated, by
9 striking “First” and inserting “Second”;

10 (4) in paragraph (3), as so redesignated, by
11 striking “Second” and inserting “Third”;

12 (5) in paragraph (4), as so redesignated—

13 (A) by striking “Third” and inserting
14 “Fourth”; and

15 (B) by striking the semicolon at the end
16 and inserting a period;

17 (6) in paragraph (5), as so redesignated, by
18 striking “Fourth” and inserting “Fifth”;

19 (7) in paragraph (6), as so redesignated, by
20 striking “Fifth” and inserting “Sixth”;

21 (8) in paragraph (7), as so redesignated, by
22 striking “Sixth” and inserting “Seventh”; and

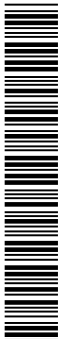
23 (9) by inserting before paragraph (2), as so re-
24 designated, the following:

25 “(1) First:



1 “(A) Allowed unsecured claims for domes-
2 tic support obligations that, as of the date of
3 the filing of the petition in a case under this
4 title, are owed to or recoverable by a spouse,
5 former spouse, or child of the debtor, or such
6 child’s parent, legal guardian, or responsible
7 relative, without regard to whether the claim is
8 filed by such person or is filed by a govern-
9 mental unit on behalf of such person, on the
10 condition that funds received under this para-
11 graph by a governmental unit under this title
12 after the date of the filing of the petition shall
13 be applied and distributed in accordance with
14 applicable nonbankruptcy law.

15 “(B) Subject to claims under subpara-
16 graph (A), allowed unsecured claims for domes-
17 tic support obligations that, as of the date of
18 the filing of the petition, are assigned by a
19 spouse, former spouse, child of the debtor, or
20 such child’s parent, legal guardian, or respon-
21 sible relative to a governmental unit (unless
22 such obligation is assigned voluntarily by the
23 spouse, former spouse, child, parent, legal
24 guardian, or responsible relative of the child for
25 the purpose of collecting the debt) or are owed



1 directly to or recoverable by a governmental
2 unit under applicable nonbankruptcy law, on
3 the condition that funds received under this
4 paragraph by a governmental unit under this
5 title after the date of the filing of the petition
6 be applied and distributed in accordance with
7 applicable nonbankruptcy law.

8 “(C) If a trustee is appointed or elected
9 under section 701, 702, 703, 1104, 1202, or
10 1302, the administrative expenses of the trustee
11 allowed under paragraphs (1)(A), (2), and (6)
12 of section 503(b) shall be paid before payment
13 of claims under subparagraphs (A) and (B), to
14 the extent that the trustee administers assets
15 that are otherwise available for the payment of
16 such claims.”.

17 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**
18 **DISCHARGE IN CASES INVOLVING DOMESTIC**
19 **SUPPORT OBLIGATIONS.**

20 Title 11, United States Code, is amended—

21 (1) in section 1129(a), by adding at the end the
22 following:

23 “(14) If the debtor is required by a judicial or
24 administrative order, or by statute, to pay a domes-
25 tic support obligation, the debtor has paid all



1 amounts payable under such order or such statute
2 for such obligation that first become payable after
3 the date of the filing of the petition.”;

4 (2) in section 1208(c)—

5 (A) in paragraph (8), by striking “or” at
6 the end;

7 (B) in paragraph (9), by striking the pe-
8 riod at the end and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(10) failure of the debtor to pay any domestic
11 support obligation that first becomes payable after
12 the date of the filing of the petition.”;

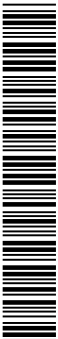
13 (3) in section 1222(a)—

14 (A) in paragraph (2), by striking “and” at
15 the end;

16 (B) in paragraph (3), by striking the pe-
17 riod at the end and inserting “; and”; and

18 (C) by adding at the end the following:

19 “(4) notwithstanding any other provision of this
20 section, a plan may provide for less than full pay-
21 ment of all amounts owed for a claim entitled to pri-
22 ority under section 507(a)(1)(B) only if the plan
23 provides that all of the debtor’s projected disposable
24 income for a 5-year period beginning on the date



1 that the first payment is due under the plan will be
2 applied to make payments under the plan.”;

3 (4) in section 1222(b)—

4 (A) by redesignating paragraph (11) as
5 paragraph (12); and

6 (B) by inserting after paragraph (10) the
7 following:

8 “(11) provide for the payment of interest accru-
9 ing after the date of the filing of the petition on un-
10 secured claims that are nondischargeable under sec-
11 tion 1228(a), except that such interest may be paid
12 only to the extent that the debtor has disposable in-
13 come available to pay such interest after making
14 provision for full payment of all allowed claims;”;

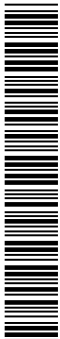
15 (5) in section 1225(a)—

16 (A) in paragraph (5), by striking “and” at
17 the end;

18 (B) in paragraph (6), by striking the pe-
19 riod at the end and inserting “; and”; and

20 (C) by adding at the end the following:

21 “(7) the debtor has paid all amounts that are
22 required to be paid under a domestic support obliga-
23 tion and that first become payable after the date of
24 the filing of the petition if the debtor is required by



1 a judicial or administrative order, or by statute, to
2 pay such domestic support obligation.”;

3 (6) in section 1228(a), in the matter preceding
4 paragraph (1), by inserting “, and in the case of a
5 debtor who is required by a judicial or administra-
6 tive order, or by statute, to pay a domestic support
7 obligation, after such debtor certifies that all
8 amounts payable under such order or such statute
9 that are due on or before the date of the certifi-
10 cation (including amounts due before the petition
11 was filed, but only to the extent provided for by the
12 plan) have been paid” after “completion by the debt-
13 or of all payments under the plan”;

14 (7) in section 1307(c)—

15 (A) in paragraph (9), by striking “or” at
16 the end;

17 (B) in paragraph (10), by striking the pe-
18 riod at the end and inserting “; or”; and

19 (C) by adding at the end the following:

20 “(11) failure of the debtor to pay any domestic
21 support obligation that first becomes payable after
22 the date of the filing of the petition.”;

23 (8) in section 1322(a)—

24 (A) in paragraph (2), by striking “and” at
25 the end;



1 (B) in paragraph (3), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(4) notwithstanding any other provision of this
5 section, a plan may provide for less than full pay-
6 ment of all amounts owed for a claim entitled to pri-
7 ority under section 507(a)(1)(B) only if the plan
8 provides that all of the debtor’s projected disposable
9 income for a 5-year period beginning on the date
10 that the first payment is due under the plan will be
11 applied to make payments under the plan.”;

12 (9) in section 1322(b)—

13 (A) in paragraph (9), by striking “; and”
14 and inserting a semicolon;

15 (B) by redesignating paragraph (10) as
16 paragraph (11); and

17 (C) inserting after paragraph (9) the fol-
18 lowing:

19 “(10) provide for the payment of interest accru-
20 ing after the date of the filing of the petition on un-
21 secured claims that are nondischargeable under sec-
22 tion 1328(a), except that such interest may be paid
23 only to the extent that the debtor has disposable in-
24 come available to pay such interest after making

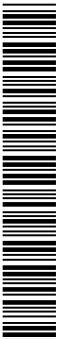


1 provision for full payment of all allowed claims;
2 and”;

3 (10) in section 1325(a), as amended by section
4 102, by inserting after paragraph (7) the following:

5 “(8) the debtor has paid all amounts that are
6 required to be paid under a domestic support obliga-
7 tion and that first become payable after the date of
8 the filing of the petition if the debtor is required by
9 a judicial or administrative order, or by statute, to
10 pay such domestic support obligation; and”;

11 (11) in section 1328(a), in the matter preceding
12 paragraph (1), by inserting “, and in the case of a
13 debtor who is required by a judicial or administra-
14 tive order, or by statute, to pay a domestic support
15 obligation, after such debtor certifies that all
16 amounts payable under such order or such statute
17 that are due on or before the date of the certifi-
18 cation (including amounts due before the petition
19 was filed, but only to the extent provided for by the
20 plan) have been paid” after “completion by the debt-
21 or of all payments under the plan”.



1 **SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**
2 **SUPPORT OBLIGATION PROCEEDINGS.**

3 Section 362(b) of title 11, United States Code, is
4 amended by striking paragraph (2) and inserting the fol-
5 lowing:

6 “(2) under subsection (a)—

7 “(A) of the commencement or continuation
8 of a civil action or proceeding—

9 “(i) for the establishment of paternity;

10 “(ii) for the establishment or modi-
11 fication of an order for domestic support
12 obligations;

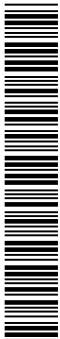
13 “(iii) concerning child custody or visi-
14 tation;

15 “(iv) for the dissolution of a marriage,
16 except to the extent that such proceeding
17 seeks to determine the division of property
18 that is property of the estate; or

19 “(v) regarding domestic violence;

20 “(B) of the collection of a domestic sup-
21 port obligation from property that is not prop-
22 erty of the estate;

23 “(C) with respect to the withholding of in-
24 come that is property of the estate or property
25 of the debtor for payment of a domestic support



1 obligation under a judicial or administrative
2 order or a statute;

3 “(D) of the withholding, suspension, or re-
4 striction of a driver’s license, a professional or
5 occupational license, or a recreational license,
6 under State law, as specified in section
7 466(a)(16) of the Social Security Act;

8 “(E) of the reporting of overdue support
9 owed by a parent to any consumer reporting
10 agency as specified in section 466(a)(7) of the
11 Social Security Act;

12 “(F) of the interception of a tax refund, as
13 specified in sections 464 and 466(a)(3) of the
14 Social Security Act or under an analogous State
15 law; or

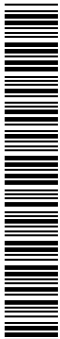
16 “(G) of the enforcement of a medical obli-
17 gation, as specified under title IV of the Social
18 Security Act;”.

19 **SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**
20 **ALIMONY, MAINTENANCE, AND SUPPORT.**

21 Section 523 of title 11, United States Code, is
22 amended—

23 (1) in subsection (a)—

24 (A) by striking paragraph (5) and insert-
25 ing the following:



1 “(5) for a domestic support obligation;”; and
2 (B) by striking paragraph (18);
3 (2) in subsection (c), by striking “(6), or (15)”
4 each place it appears and inserting “or (6)”; and
5 (3) in paragraph (15), as added by Public Law
6 103–394 (108 Stat. 4133)—
7 (A) by inserting “to a spouse, former
8 spouse, or child of the debtor and” before “not
9 of the kind”;
10 (B) by inserting “or” after “court of
11 record,”; and
12 (C) by striking “unless—” and all that fol-
13 lows through the end of the paragraph and in-
14 serting a semicolon.

15 **SEC. 216. CONTINUED LIABILITY OF PROPERTY.**

16 Section 522 of title 11, United States Code, is
17 amended—

18 (1) in subsection (c), by striking paragraph (1)
19 and inserting the following:

20 “(1) a debt of a kind specified in paragraph (1)
21 or (5) of section 523(a) (in which case, notwith-
22 standing any provision of applicable nonbankruptcy
23 law to the contrary, such property shall be liable for
24 a debt of a kind specified in section 523(a)(5));”;



1 (2) in subsection (f)(1)(A), by striking the dash
2 and all that follows through the end of the subpara-
3 graph and inserting “of a kind that is specified in
4 section 523(a)(5); or”; and
5 (3) in subsection (g)(2), by striking “subsection
6 (f)(2)” and inserting “subsection (f)(1)(B)”.

7 **SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS**
8 **AGAINST PREFERENTIAL TRANSFER MO-**
9 **TIONS.**

10 Section 547(c)(7) of title 11, United States Code, is
11 amended to read as follows:

12 “(7) to the extent such transfer was a bona fide
13 payment of a debt for a domestic support obliga-
14 tion;”.

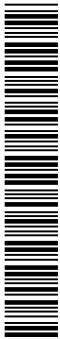
15 **SEC. 218. DISPOSABLE INCOME DEFINED.**

16 Section 1225(b)(2)(A) of title 11, United States
17 Code, is amended by inserting “or for a domestic support
18 obligation that first becomes payable after the date of the
19 filing of the petition” after “dependent of the debtor”.

20 **SEC. 219. COLLECTION OF CHILD SUPPORT.**

21 (a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-
22 tion 704 of title 11, United States Code, as amended by
23 section 102, is amended—

24 (1) in subsection (a)—



1 (A) in paragraph (8), by striking “and” at
2 the end;

3 (B) in paragraph (9), by striking the pe-
4 riod and inserting a semicolon; and

5 (C) by adding at the end the following:

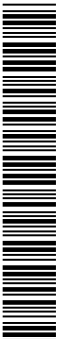
6 “(10) if with respect to the debtor there is a
7 claim for a domestic support obligation, provide the
8 applicable notice specified in subsection (c); and”;
9 and

10 (2) by adding at the end the following:

11 “(c)(1) In a case described in subsection (a)(10) to
12 which subsection (a)(10) applies, the trustee shall—

13 “(A)(i) provide written notice to the holder of
14 the claim described in subsection (a)(10) of such
15 claim and of the right of such holder to use the serv-
16 ices of the State child support enforcement agency
17 established under sections 464 and 466 of the Social
18 Security Act for the State in which such holder re-
19 sides, for assistance in collecting child support dur-
20 ing and after the case under this title;

21 “(ii) include in the notice provided under clause
22 (i) the address and telephone number of such State
23 child support enforcement agency; and



1 “(iii) include in the notice provided under
2 clause (i) an explanation of the rights of such holder
3 to payment of such claim under this chapter;

4 “(B)(i) provide written notice to such State
5 child support enforcement agency of such claim; and

6 “(ii) include in the notice provided under clause
7 (i) the name, address, and telephone number of such
8 holder; and

9 “(C) at such time as the debtor is granted a
10 discharge under section 727, provide written notice
11 to such holder and to such State child support en-
12 forcement agency of—

13 “(i) the granting of the discharge;

14 “(ii) the last recent known address of the
15 debtor;

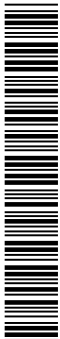
16 “(iii) the last recent known name and ad-
17 dress of the debtor’s employer; and

18 “(iv) the name of each creditor that holds
19 a claim that—

20 “(I) is not discharged under para-
21 graph (2), (4), or (14A) of section 523(a);

22 or

23 “(II) was reaffirmed by the debtor
24 under section 524(c).



1 “(2)(A) The holder of a claim described in subsection
2 (a)(10) or the State child support enforcement agency of
3 the State in which such holder resides may request from
4 a creditor described in paragraph (1)(C)(iv) the last
5 known address of the debtor.

6 “(B) Notwithstanding any other provision of law, a
7 creditor that makes a disclosure of a last known address
8 of a debtor in connection with a request made under sub-
9 paragraph (A) shall not be liable by reason of making such
10 disclosure.”.

11 (b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—
12 Section 1106 of title 11, United States Code, is
13 amended—

14 (1) in subsection (a)—

15 (A) in paragraph (6), by striking “and” at
16 the end;

17 (B) in paragraph (7), by striking the pe-
18 riod and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(8) if with respect to the debtor there is a
21 claim for a domestic support obligation, provide the
22 applicable notice specified in subsection (c).”; and

23 (2) by adding at the end the following:

24 “(c)(1) In a case described in subsection (a)(8) to
25 which subsection (a)(8) applies, the trustee shall—



1 “(A)(i) provide written notice to the holder of
2 the claim described in subsection (a)(8) of such
3 claim and of the right of such holder to use the serv-
4 ices of the State child support enforcement agency
5 established under sections 464 and 466 of the Social
6 Security Act for the State in which such holder re-
7 sides, for assistance in collecting child support dur-
8 ing and after the case under this title; and

9 “(ii) include in the notice required by clause (i)
10 the address and telephone number of such State
11 child support enforcement agency;

12 “(B)(i) provide written notice to such State
13 child support enforcement agency of such claim; and

14 “(ii) include in the notice required by clause (i)
15 the name, address, and telephone number of such
16 holder; and

17 “(C) at such time as the debtor is granted a
18 discharge under section 1141, provide written notice
19 to such holder and to such State child support en-
20 forcement agency of—

21 “(i) the granting of the discharge;

22 “(ii) the last recent known address of the
23 debtor;

24 “(iii) the last recent known name and ad-
25 dress of the debtor’s employer; and



1 “(iv) the name of each creditor that holds
2 a claim that—

3 “(I) is not discharged under para-
4 graph (2), (4), or (14A) of section 523(a);
5 or

6 “(II) was reaffirmed by the debtor
7 under section 524(c).

8 “(2)(A) The holder of a claim described in subsection
9 (a)(8) or the State child enforcement support agency of
10 the State in which such holder resides may request from
11 a creditor described in paragraph (1)(C)(iv) the last
12 known address of the debtor.

13 “(B) Notwithstanding any other provision of law, a
14 creditor that makes a disclosure of a last known address
15 of a debtor in connection with a request made under sub-
16 paragraph (A) shall not be liable by reason of making such
17 disclosure.”.

18 (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—
19 Section 1202 of title 11, United States Code, is
20 amended—

21 (1) in subsection (b)—

22 (A) in paragraph (4), by striking “and” at
23 the end;

24 (B) in paragraph (5), by striking the pe-
25 riod and inserting “; and”; and



1 (C) by adding at the end the following:

2 “(6) if with respect to the debtor there is a
3 claim for a domestic support obligation, provide the
4 applicable notice specified in subsection (c).”; and

5 (2) by adding at the end the following:

6 “(c)(1) In a case described in subsection (b)(6) to
7 which subsection (b)(6) applies, the trustee shall—

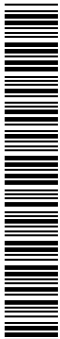
8 “(A)(i) provide written notice to the holder of
9 the claim described in subsection (b)(6) of such
10 claim and of the right of such holder to use the serv-
11 ices of the State child support enforcement agency
12 established under sections 464 and 466 of the Social
13 Security Act for the State in which such holder re-
14 sides, for assistance in collecting child support dur-
15 ing and after the case under this title; and

16 “(ii) include in the notice provided under clause
17 (i) the address and telephone number of such State
18 child support enforcement agency;

19 “(B)(i) provide written notice to such State
20 child support enforcement agency of such claim; and

21 “(ii) include in the notice provided under clause
22 (i) the name, address, and telephone number of such
23 holder; and

24 “(C) at such time as the debtor is granted a
25 discharge under section 1228, provide written notice



1 to such holder and to such State child support en-
2 forcement agency of—

3 “(i) the granting of the discharge;

4 “(ii) the last recent known address of the
5 debtor;

6 “(iii) the last recent known name and ad-
7 dress of the debtor’s employer; and

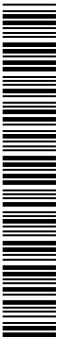
8 “(iv) the name of each creditor that holds
9 a claim that—

10 “(I) is not discharged under para-
11 graph (2), (4), or (14A) of section 523(a);
12 or

13 “(II) was reaffirmed by the debtor
14 under section 524(c).

15 “(2)(A) The holder of a claim described in subsection
16 (b)(6) or the State child support enforcement agency of
17 the State in which such holder resides may request from
18 a creditor described in paragraph (1)(C)(iv) the last
19 known address of the debtor.

20 “(B) Notwithstanding any other provision of law, a
21 creditor that makes a disclosure of a last known address
22 of a debtor in connection with a request made under sub-
23 paragraph (A) shall not be liable by reason of making that
24 disclosure.”.



1 (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—
2 Section 1302 of title 11, United States Code, is
3 amended—

4 (1) in subsection (b)—

5 (A) in paragraph (4), by striking “and” at
6 the end;

7 (B) in paragraph (5), by striking the pe-
8 riod and inserting “; and”; and

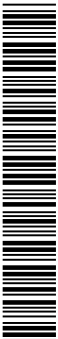
9 (C) by adding at the end the following:

10 “(6) if with respect to the debtor there is a
11 claim for a domestic support obligation, provide the
12 applicable notice specified in subsection (d).”; and

13 (2) by adding at the end the following:

14 “(d)(1) In a case described in subsection (b)(6) to
15 which subsection (b)(6) applies, the trustee shall—

16 “(A)(i) provide written notice to the holder of
17 the claim described in subsection (b)(6) of such
18 claim and of the right of such holder to use the serv-
19 ices of the State child support enforcement agency
20 established under sections 464 and 466 of the Social
21 Security Act for the State in which such holder re-
22 sides, for assistance in collecting child support dur-
23 ing and after the case under this title; and



1 “(ii) include in the notice provided under clause
2 (i) the address and telephone number of such State
3 child support enforcement agency;

4 “(B)(i) provide written notice to such State
5 child support enforcement agency of such claim; and

6 “(ii) include in the notice provided under clause
7 (i) the name, address, and telephone number of such
8 holder; and

9 “(C) at such time as the debtor is granted a
10 discharge under section 1328, provide written notice
11 to such holder and to such State child support en-
12 forcement agency of—

13 “(i) the granting of the discharge;

14 “(ii) the last recent known address of the
15 debtor;

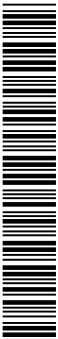
16 “(iii) the last recent known name and ad-
17 dress of the debtor’s employer; and

18 “(iv) the name of each creditor that holds
19 a claim that—

20 “(I) is not discharged under para-
21 graph (2) or (4) of section 523(a); or

22 “(II) was reaffirmed by the debtor
23 under section 524(c).

24 “(2)(A) The holder of a claim described in subsection
25 (b)(6) or the State child support enforcement agency of



1 the State in which such holder resides may request from
2 a creditor described in paragraph (1)(C)(iv) the last
3 known address of the debtor.

4 “(B) Notwithstanding any other provision of law, a
5 creditor that makes a disclosure of a last known address
6 of a debtor in connection with a request made under sub-
7 paragraph (A) shall not be liable by reason of making that
8 disclosure.”.

9 **Subtitle C—Other Consumer**
10 **Protections**

11 **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-**
12 **RUPTCY FILINGS.**

13 Section 110 of title 11, United States Code, is
14 amended—

15 (1) in subsection (b)—

16 (A) in paragraph (1), by adding at the end
17 the following: “If a bankruptcy petition pre-
18 parer is not an individual, then an officer, prin-
19 cipal, responsible person, or partner of the
20 bankruptcy petition preparer shall be required
21 to—

22 “(A) sign the document for filing; and

23 “(B) print on the document the name and ad-
24 dress of that officer, principal, responsible person, or
25 partner.”; and



1 (B) by striking paragraph (2) and insert-
2 ing the following:

3 “(2)(A) Before preparing any document for filing or
4 accepting any fees from a debtor, the bankruptcy petition
5 preparer shall provide to the debtor a written notice which
6 shall be on an official form prescribed by the Judicial Con-
7 ference of the United States in accordance with rule 9009
8 of the Federal Rules of Bankruptcy Procedure.

9 “(B) The notice under subparagraph (A)—

10 “(i) shall inform the debtor in simple language
11 that a bankruptcy petition preparer is not an attor-
12 ney and may not practice law or give legal advice;

13 “(ii) may contain a description of examples of
14 legal advice that a bankruptcy petition preparer is
15 not authorized to give, in addition to any advice that
16 the preparer may not give by reason of subsection
17 (e)(2); and

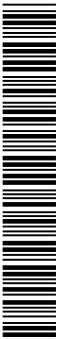
18 “(iii) shall—

19 “(I) be signed by the debtor and, under
20 penalty of perjury, by the bankruptcy petition
21 preparer; and

22 “(II) be filed with any document for fil-
23 ing.”;

24 (2) in subsection (c)—

25 (A) in paragraph (2)—



1 (i) by striking “(2) For purposes” and
2 inserting “(2)(A) Subject to subparagraph
3 (B), for purposes”; and

4 (ii) by adding at the end the fol-
5 lowing:

6 “(B) If a bankruptcy petition preparer is not an indi-
7 vidual, the identifying number of the bankruptcy petition
8 preparer shall be the Social Security account number of
9 the officer, principal, responsible person, or partner of the
10 bankruptcy petition preparer.”; and

11 (B) by striking paragraph (3);

12 (3) in subsection (d)—

13 (A) by striking “(d)(1)” and inserting
14 “(d)”; and

15 (B) by striking paragraph (2);

16 (4) in subsection (e)—

17 (A) by striking paragraph (2); and

18 (B) by adding at the end the following:

19 “(2)(A) A bankruptcy petition preparer may not offer
20 a potential bankruptcy debtor any legal advice, including
21 any legal advice described in subparagraph (B).

22 “(B) The legal advice referred to in subparagraph
23 (A) includes advising the debtor—

24 “(i) whether—

25 “(I) to file a petition under this title; or



1 “(II) commencing a case under chapter 7,
2 11, 12, or 13 is appropriate;

3 “(ii) whether the debtor’s debts will be dis-
4 charged in a case under this title;

5 “(iii) whether the debtor will be able to retain
6 the debtor’s home, car, or other property after com-
7 mencing a case under this title;

8 “(iv) concerning—

9 “(I) the tax consequences of a case
10 brought under this title; or

11 “(II) the dischargeability of tax claims;

12 “(v) whether the debtor may or should promise
13 to repay debts to a creditor or enter into a reaffir-
14 mation agreement with a creditor to reaffirm a debt;

15 “(vi) concerning how to characterize the nature
16 of the debtor’s interests in property or the debtor’s
17 debts; or

18 “(vii) concerning bankruptcy procedures and
19 rights.”;

20 (5) in subsection (f)—

21 (A) by striking “(f)(1)” and inserting

22 “(f)”; and

23 (B) by striking paragraph (2);

24 (6) in subsection (g)—



1 (A) by striking “(g)(1)” and inserting
2 “(g)”; and

3 (B) by striking paragraph (2);
4 (7) in subsection (h)—

5 (A) by redesignating paragraphs (1)
6 through (4) as paragraphs (2) through (5), re-
7 spectively;

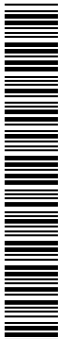
8 (B) by inserting before paragraph (2), as
9 so redesignated, the following:

10 “(1) The Supreme Court may promulgate rules under
11 section 2075 of title 28, or the Judicial Conference of the
12 United States may prescribe guidelines, for setting a max-
13 imum allowable fee chargeable by a bankruptcy petition
14 preparer. A bankruptcy petition preparer shall notify the
15 debtor of any such maximum amount before preparing any
16 document for filing for a debtor or accepting any fee from
17 the debtor.”;

18 (C) in paragraph (2), as so redesignated—

19 (i) by striking “Within 10 days after
20 the date of the filing of a petition, a bank-
21 ruptcy petition preparer shall file a” and
22 inserting “A”;

23 (ii) by inserting “by the bankruptcy
24 petition preparer shall be filed together
25 with the petition,” after “perjury”; and



1 (iii) by adding at the end the fol-
2 lowing: “If rules or guidelines setting a
3 maximum fee for services have been pro-
4 mulgated or prescribed under paragraph
5 (1), the declaration under this paragraph
6 shall include a certification that the bank-
7 ruptcy petition preparer complied with the
8 notification requirement under paragraph
9 (1).”;

10 (D) by striking paragraph (3), as so redes-
11 igned, and inserting the following:

12 “(3)(A) The court shall disallow and order the imme-
13 diate turnover to the bankruptcy trustee any fee referred
14 to in paragraph (2) found to be in excess of the value
15 of any services—

16 “(i) rendered by the bankruptcy petition pre-
17 parer during the 12-month period immediately pre-
18 ceding the date of the filing of the petition; or

19 “(ii) found to be in violation of any rule or
20 guideline promulgated or prescribed under para-
21 graph (1).

22 “(B) All fees charged by a bankruptcy petition pre-
23 parer may be forfeited in any case in which the bankruptcy
24 petition preparer fails to comply with this subsection or
25 subsection (b), (c), (d), (e), (f), or (g).



1 “(C) An individual may exempt any funds recovered
2 under this paragraph under section 522(b).”; and

3 (E) in paragraph (4), as so redesignated,
4 by striking “or the United States trustee” and
5 inserting “the United States trustee (or the
6 bankruptcy administrator, if any) or the court,
7 on the initiative of the court,”;

8 (8) in subsection (i)(1), by striking the matter
9 preceding subparagraph (A) and inserting the fol-
10 lowing:

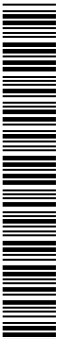
11 “(i)(1) If a bankruptcy petition preparer violates this
12 section or commits any act that the court finds to be
13 fraudulent, unfair, or deceptive, on the motion of the debt-
14 or, trustee, United States trustee (or the bankruptcy ad-
15 ministrator, if any), and after notice and a hearing, the
16 court shall order the bankruptcy petition preparer to pay
17 to the debtor—”;

18 (9) in subsection (j)—

19 (A) in paragraph (2)—

20 (i) in subparagraph (A)(i)(I), by strik-
21 ing “a violation of which subjects a person
22 to criminal penalty”;

23 (ii) in subparagraph (B)—



1 (I) by striking “or has not paid
2 a penalty” and inserting “has not
3 paid a penalty”; and

4 (II) by inserting “or failed to dis-
5 gorge all fees ordered by the court”
6 after “a penalty imposed under this
7 section,”;

8 (B) by redesignating paragraph (3) as
9 paragraph (4); and

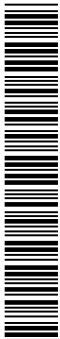
10 (C) by inserting after paragraph (2) the
11 following:

12 “(3) The court, as part of its contempt power, may
13 enjoin a bankruptcy petition preparer that has failed to
14 comply with a previous order issued under this section.
15 The injunction under this paragraph may be issued on the
16 motion of the court, the trustee, or the United States
17 trustee (or the bankruptcy administrator, if any).”; and

18 (10) by adding at the end the following:

19 “(l)(1) A bankruptcy petition preparer who fails to
20 comply with any provision of subsection (b), (c), (d), (e),
21 (f), (g), or (h) may be fined not more than \$500 for each
22 such failure.

23 “(2) The court shall triple the amount of a fine as-
24 sessed under paragraph (1) in any case in which the court
25 finds that a bankruptcy petition preparer—



1 “(A) advised the debtor to exclude assets or in-
2 come that should have been included on applicable
3 schedules;

4 “(B) advised the debtor to use a false Social
5 Security account number;

6 “(C) failed to inform the debtor that the debtor
7 was filing for relief under this title; or

8 “(D) prepared a document for filing in a man-
9 ner that failed to disclose the identity of the bank-
10 ruptcy petition preparer.

11 “(3) A debtor, trustee, creditor, or United States
12 trustee (or the bankruptcy administrator, if any) may file
13 a motion for an order imposing a fine on the bankruptcy
14 petition preparer for any violation of this section.

15 “(4)(A) Fines imposed under this subsection in judi-
16 cial districts served by United States trustees shall be paid
17 to the United States trustee, who shall deposit an amount
18 equal to such fines in a special account of the United
19 States Trustee System Fund referred to in section
20 586(e)(2) of title 28. Amounts deposited under this sub-
21 paragraph shall be available to fund the enforcement of
22 this section on a national basis.

23 “(B) Fines imposed under this subsection in judicial
24 districts served by bankruptcy administrators shall be de-
25 posited as offsetting receipts to the fund established under



1 section 1931 of title 28, and shall remain available until
2 expended to reimburse any appropriation for the amount
3 paid out of such appropriation for expenses of the oper-
4 ation and maintenance of the courts of the United
5 States.”.

6 **SEC. 222. SENSE OF CONGRESS.**

7 It is the sense of Congress that States should develop
8 curricula relating to the subject of personal finance, de-
9 signed for use in elementary and secondary schools.

10 **SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**
11 **STATES CODE.**

12 Section 507(a) of title 11, United States Code, as
13 amended by section 212, is amended by inserting after
14 paragraph (9) the following:

15 “(10) Tenth, allowed claims for death or per-
16 sonal injury resulting from the operation of a motor
17 vehicle or vessel if such operation was unlawful be-
18 cause the debtor was intoxicated from using alcohol,
19 a drug, or another substance.”.

20 **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**
21 **RUPTCY.**

22 (a) IN GENERAL.—Section 522 of title 11, United
23 States Code, is amended—

24 (1) in subsection (b)—

25 (A) in paragraph (2)—



1 (i) in subparagraph (A), by striking
2 “and” at the end;

3 (ii) in subparagraph (B), by striking
4 the period at the end and inserting “;
5 and”;

6 (iii) by adding at the end the fol-
7 lowing:

8 “(C) retirement funds to the extent that those
9 funds are in a fund or account that is exempt from
10 taxation under section 401, 403, 408, 408A, 414,
11 457, or 501(a) of the Internal Revenue Code of
12 1986.”; and

13 (iv) by striking “(2)(A) any property”
14 and inserting:

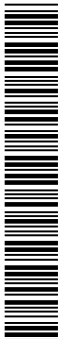
15 “(3) Property listed in this paragraph is—

16 “(A) any property”;

17 (B) by striking paragraph (1) and insert-
18 ing:

19 “(2) Property listed in this paragraph is property
20 that is specified under subsection (d), unless the State law
21 that is applicable to the debtor under paragraph (3)(A)
22 specifically does not so authorize.”;

23 (C) by striking “(b) Notwithstanding” and
24 inserting “(b)(1) Notwithstanding”;



1 (D) by striking “paragraph (2)” each place
2 it appears and inserting “paragraph (3)”;

3 (E) by striking “paragraph (1)” each place
4 it appears and inserting “paragraph (2)”;

5 (F) by striking “Such property is—”; and

6 (G) by adding at the end the following:

7 “(4) For purposes of paragraph (3)(C) and sub-
8 section (d)(12), the following shall apply:

9 “(A) If the retirement funds are in a retirement
10 fund that has received a favorable determination
11 under section 7805 of the Internal Revenue Code of
12 1986, and that determination is in effect as of the
13 date of the filing of the petition in a case under this
14 title, those funds shall be presumed to be exempt
15 from the estate.

16 “(B) If the retirement funds are in a retirement
17 fund that has not received a favorable determination
18 under such section 7805, those funds are exempt
19 from the estate if the debtor demonstrates that—

20 “(i) no prior determination to the contrary
21 has been made by a court or the Internal Rev-
22 enue Service; and

23 “(ii)(I) the retirement fund is in substan-
24 tial compliance with the applicable requirements
25 of the Internal Revenue Code of 1986; or



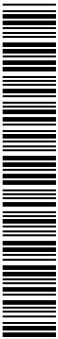
1 “(II) the retirement fund fails to be in
2 substantial compliance with the applicable re-
3 quirements of the Internal Revenue Code of
4 1986 and the debtor is not materially respon-
5 sible for that failure.

6 “(C) A direct transfer of retirement funds from
7 1 fund or account that is exempt from taxation
8 under section 401, 403, 408, 408A, 414, 457, or
9 501(a) of the Internal Revenue Code of 1986, under
10 section 401(a)(31) of the Internal Revenue Code of
11 1986, or otherwise, shall not cease to qualify for ex-
12 emption under paragraph (3)(C) or subsection
13 (d)(12) by reason of such direct transfer.

14 “(D)(i) Any distribution that qualifies as an eli-
15 gible rollover distribution within the meaning of sec-
16 tion 402(c) of the Internal Revenue Code of 1986 or
17 that is described in clause (ii) shall not cease to
18 qualify for exemption under paragraph (3)(C) or
19 subsection (d)(12) by reason of such distribution.

20 “(ii) A distribution described in this clause is
21 an amount that—

22 “(I) has been distributed from a fund or
23 account that is exempt from taxation under sec-
24 tion 401, 403, 408, 408A, 414, 457, or 501(a)
25 of the Internal Revenue Code of 1986; and



1 “(II) to the extent allowed by law, is de-
2 posited in such a fund or account not later than
3 60 days after the distribution of such amount.”;
4 and
5 (2) in subsection (d)—

6 (A) in the matter preceding paragraph (1),
7 by striking “subsection (b)(1)” and inserting
8 “subsection (b)(2)”; and

9 (B) by adding at the end the following:

10 “(12) Retirement funds to the extent that those
11 funds are in a fund or account that is exempt from
12 taxation under section 401, 403, 408, 408A, 414,
13 457, or 501(a) of the Internal Revenue Code of
14 1986.”.

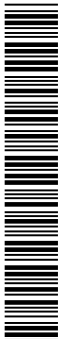
15 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
16 United States Code, is amended—

17 (1) in paragraph (17), by striking “or” at the
18 end;

19 (2) in paragraph (18), by striking the period
20 and inserting a semicolon; and

21 (3) by inserting after paragraph (18) the fol-
22 lowing:

23 “(19) under subsection (a), of withholding of
24 income from a debtor’s wages and collection of
25 amounts withheld, under the debtor’s agreement au-



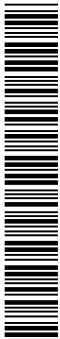
1 thorizing that withholding and collection for the ben-
2 efit of a pension, profit-sharing, stock bonus, or
3 other plan established under section 401, 403, 408,
4 408A, 414, 457, or 501(c) of the Internal Revenue
5 Code of 1986, that is sponsored by the employer of
6 the debtor, or an affiliate, successor, or predecessor
7 of such employer—

8 “(A) to the extent that the amounts with-
9 held and collected are used solely for payments
10 relating to a loan from a plan under section
11 408(b)(1) of the Employee Retirement Income
12 Security Act of 1974 or is subject to section
13 72(p) of the Internal Revenue Code of 1986; or

14 “(B) a loan from a thrift savings plan per-
15 mitted under subchapter III of chapter 84 of
16 title 5, that satisfies the requirements of section
17 8433(g) of such title;

18 but nothing in this paragraph may be construed to
19 provide that any loan made under a governmental
20 plan under section 414(d), or a contract or account
21 under section 403(b), of the Internal Revenue Code
22 of 1986 constitutes a claim or a debt under this
23 title;”.

24 (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of
25 title 11, United States Code, as amended by section 215,



1 is amended by inserting after paragraph (17) the fol-
2 lowing:

3 “(18) owed to a pension, profit-sharing, stock
4 bonus, or other plan established under section 401,
5 403, 408, 408A, 414, 457, or 501(c) of the Internal
6 Revenue Code of 1986, under—

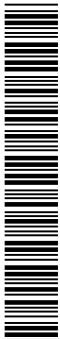
7 “(A) a loan permitted under section
8 408(b)(1) of the Employee Retirement Income
9 Security Act of 1974, or subject to section
10 72(p) of the Internal Revenue Code of 1986; or

11 “(B) a loan from a thrift savings plan per-
12 mitted under subchapter III of chapter 84 of
13 title 5, that satisfies the requirements of section
14 8433(g) of such title;

15 but nothing in this paragraph may be construed to
16 provide that any loan made under a governmental
17 plan under section 414(d), or a contract or account
18 under section 403(b), of the Internal Revenue Code
19 of 1986 constitutes a claim or a debt under this
20 title; or”.

21 (d) PLAN CONTENTS.—Section 1322 of title 11,
22 United States Code, is amended by adding at the end the
23 following:

24 “(f) A plan may not materially alter the terms of a
25 loan described in section 362(b)(19) and any amounts re-



1 quired to repay such loan shall not constitute ‘disposable
2 income’ under section 1325.”.

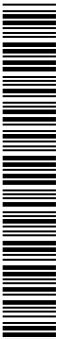
3 (e) ASSET LIMITATION.—

4 (1) LIMITATION.—Section 522 of title 11,
5 United States Code, is amended by adding at the
6 end the following:

7 “(n) For assets in individual retirement accounts de-
8 scribed in section 408 or 408A of the Internal Revenue
9 Code of 1986, other than a simplified employee pension
10 under section 408(k) of such Code or a simple retirement
11 account under section 408(p) of such Code, the aggregate
12 value of such assets exempted under this section, without
13 regard to amounts attributable to rollover contributions
14 under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and
15 403(b)(8) of the Internal Revenue Code of 1986, and
16 earnings thereon, shall not exceed \$1,000,000 in a case
17 filed by a debtor who is an individual, except that such
18 amount may be increased if the interests of justice so re-
19 quire.”.

20 (2) ADJUSTMENT OF DOLLAR AMOUNTS.—

21 Paragraphs (1) and (2) of section 104(b) of title 11,
22 United States Code, are amended by inserting
23 “522(n),” after “522(d),”.



1 **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**
2 **RUPTCY.**

3 (a) EXCLUSIONS.—Section 541 of title 11, United
4 States Code, is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (4), by striking “or” at
7 the end;

8 (B) by redesignating paragraph (5) as
9 paragraph (9); and

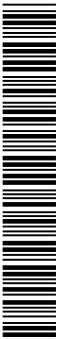
10 (C) by inserting after paragraph (4) the
11 following:

12 “(5) funds placed in an education individual re-
13 tirement account (as defined in section 530(b)(1) of
14 the Internal Revenue Code of 1986) not later than
15 365 days before the date of the filing of the petition
16 in a case under this title, but—

17 “(A) only if the designated beneficiary of
18 such account was a child, stepchild, grandchild,
19 or stepgrandchild of the debtor for the taxable
20 year for which funds were placed in such ac-
21 count;

22 “(B) only to the extent that such funds—

23 “(i) are not pledged or promised to
24 any entity in connection with any extension
25 of credit; and



1 “(ii) are not excess contributions (as
2 described in section 4973(e) of the Internal
3 Revenue Code of 1986); and

4 “(C) in the case of funds placed in all such
5 accounts having the same designated bene-
6 ficiary not earlier than 720 days nor later than
7 365 days before such date, only so much of
8 such funds as does not exceed \$5,000;

9 “(6) funds used to purchase a tuition credit or
10 certificate or contributed to an account in accord-
11 ance with section 529(b)(1)(A) of the Internal Rev-
12 enue Code of 1986 under a qualified State tuition
13 program (as defined in section 529(b)(1) of such
14 Code) not later than 365 days before the date of the
15 filing of the petition in a case under this title, but—

16 “(A) only if the designated beneficiary of
17 the amounts paid or contributed to such tuition
18 program was a child, stepchild, grandchild, or
19 stepgrandchild of the debtor for the taxable
20 year for which funds were paid or contributed;

21 “(B) with respect to the aggregate amount
22 paid or contributed to such program having the
23 same designated beneficiary, only so much of
24 such amount as does not exceed the total con-
25 tributions permitted under section 529(b)(7) of

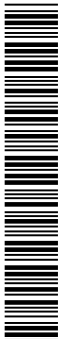


1 such Code with respect to such beneficiary, as
2 adjusted beginning on the date of the filing of
3 the petition in a case under this title by the an-
4 nual increase or decrease (rounded to the near-
5 est tenth of 1 percent) in the education expend-
6 iture category of the Consumer Price Index pre-
7 pared by the Department of Labor; and

8 “(C) in the case of funds paid or contrib-
9 uted to such program having the same des-
10 ignated beneficiary not earlier than 720 days
11 nor later than 365 days before such date, only
12 so much of such funds as does not exceed
13 \$5,000;”; and

14 (2) by adding at the end the following:

15 “(e) In determining whether any of the relationships
16 specified in paragraph (5)(A) or (6)(A) of subsection (b)
17 exists, a legally adopted child of an individual (and a child
18 who is a member of an individual’s household, if placed
19 with such individual by an authorized placement agency
20 for legal adoption by such individual), or a foster child
21 of an individual (if such child has as the child’s principal
22 place of abode the home of the debtor and is a member
23 of the debtor’s household) shall be treated as a child of
24 such individual by blood.”.



1 (b) DEBTOR'S DUTIES.—Section 521 of title 11,
2 United States Code, as amended by section 106, is amend-
3 ed by adding at the end the following:

4 “(c) In addition to meeting the requirements under
5 subsection (a), a debtor shall file with the court a record
6 of any interest that a debtor has in an education individual
7 retirement account (as defined in section 530(b)(1) of the
8 Internal Revenue Code of 1986) or under a qualified State
9 tuition program (as defined in section 529(b)(1) of such
10 Code).”.

11 **SEC. 226. DEFINITIONS.**

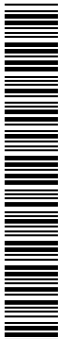
12 (a) DEFINITIONS.—Section 101 of title 11, United
13 States Code, is amended—

14 (1) by inserting after paragraph (2) the fol-
15 lowing:

16 “(3) ‘assisted person’ means any person whose
17 debts consist primarily of consumer debts and the
18 value of whose nonexempt property is less than
19 \$150,000;”;

20 (2) by inserting after paragraph (4) the fol-
21 lowing:

22 “(4A) ‘bankruptcy assistance’ means any goods
23 or services sold or otherwise provided to an assisted
24 person with the express or implied purpose of pro-
25 viding information, advice, counsel, document prepa-



1 ration, or filing, or attendance at a creditors' meet-
2 ing or appearing in a proceeding on behalf of an-
3 other or providing legal representation with respect
4 to a case or proceeding under this title;"; and

5 (3) by inserting after paragraph (12) the fol-
6 lowing:

7 “(12A) ‘debt relief agency’ means any person
8 who provides any bankruptcy assistance to an as-
9 sisted person in return for the payment of money or
10 other valuable consideration, or who is a bankruptcy
11 petition preparer under section 110, but does not
12 include—

13 “(A) any person who is an officer, director,
14 employee, or agent of a person who provides
15 such assistance or of the bankruptcy petition
16 preparer;

17 “(B) a nonprofit organization that is ex-
18 empt from taxation under section 501(c)(3) of
19 the Internal Revenue Code of 1986;

20 “(C) a creditor of such assisted person, to
21 the extent that the creditor is assisting such as-
22 sisted person to restructure any debt owed by
23 such assisted person to the creditor;

24 “(D) a depository institution (as defined in
25 section 3 of the Federal Deposit Insurance Act)



1 or any Federal credit union or State credit
2 union (as those terms are defined in section
3 101 of the Federal Credit Union Act), or any
4 affiliate or subsidiary of such depository institu-
5 tion or credit union; or

6 “(E) an author, publisher, distributor, or
7 seller of works subject to copyright protection
8 under title 17, when acting in such capacity.”.

9 (b) CONFORMING AMENDMENT.—Section 104(b) of
10 title 11, United States Code, is amended by inserting
11 “101(3),” after “sections” each place it appears.

12 **SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.**

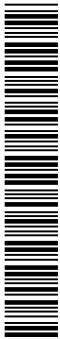
13 (a) ENFORCEMENT.—Subchapter II of chapter 5 of
14 title 11, United States Code, is amended by adding at the
15 end the following:

16 **“§ 526. Restrictions on debt relief agencies**

17 “(a) A debt relief agency shall not—

18 “(1) fail to perform any service that such agen-
19 cy informed an assisted person or prospective as-
20 sisted person it would provide in connection with a
21 case or proceeding under this title;

22 “(2) make any statement, or counsel or advise
23 any assisted person or prospective assisted person to
24 make a statement in a document filed in a case or
25 proceeding under this title, that is untrue and mis-



1 leading, or that upon the exercise of reasonable care,
2 should have been known by such agency to be untrue
3 or misleading;

4 “(3) misrepresent to any assisted person or pro-
5 spective assisted person, directly or indirectly, af-
6 firmatively or by material omission, with respect
7 to—

8 “(A) the services that such agency will pro-
9 vide to such person; or

10 “(B) the benefits and risks that may result
11 if such person becomes a debtor in a case under
12 this title; or

13 “(4) advise an assisted person or prospective
14 assisted person to incur more debt in contemplation
15 of such person filing a case under this title or to pay
16 an attorney or bankruptcy petition preparer fee or
17 charge for services performed as part of preparing
18 for or representing a debtor in a case under this
19 title.

20 “(b) Any waiver by any assisted person of any protec-
21 tion or right provided under this section shall not be en-
22 forceable against the debtor by any Federal or State court
23 or any other person, but may be enforced against a debt
24 relief agency.



1 “(c)(1) Any contract for bankruptcy assistance be-
2 tween a debt relief agency and an assisted person that
3 does not comply with the material requirements of this
4 section, section 527, or section 528 shall be void and may
5 not be enforced by any Federal or State court or by any
6 other person, other than such assisted person.

7 “(2) Any debt relief agency shall be liable to an as-
8 sisted person in the amount of any fees or charges in con-
9 nection with providing bankruptcy assistance to such per-
10 son that such debt relief agency has received, for actual
11 damages, and for reasonable attorneys’ fees and costs if
12 such agency is found, after notice and a hearing, to have—

13 “(A) intentionally or negligently failed to com-
14 ply with any provision of this section, section 527,
15 or section 528 with respect to a case or proceeding
16 under this title for such assisted person;

17 “(B) provided bankruptcy assistance to an as-
18 sisted person in a case or proceeding under this title
19 that is dismissed or converted to a case under an-
20 other chapter of this title because of such agency’s
21 intentional or negligent failure to file any required
22 document including those specified in section 521; or

23 “(C) intentionally or negligently disregarded the
24 material requirements of this title or the Federal



1 Rules of Bankruptcy Procedure applicable to such
2 agency.

3 “(3) In addition to such other remedies as are pro-
4 vided under State law, whenever the chief law enforcement
5 officer of a State, or an official or agency designated by
6 a State, has reason to believe that any person has violated
7 or is violating this section, the State—

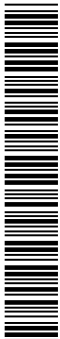
8 “(A) may bring an action to enjoin such viola-
9 tion;

10 “(B) may bring an action on behalf of its resi-
11 dents to recover the actual damages of assisted per-
12 sons arising from such violation, including any liabil-
13 ity under paragraph (2); and

14 “(C) in the case of any successful action under
15 subparagraph (A) or (B), shall be awarded the costs
16 of the action and reasonable attorneys’ fees as deter-
17 mined by the court.

18 “(4) The district courts of the United States for dis-
19 tricts located in the State shall have concurrent jurisdic-
20 tion of any action under subparagraph (A) or (B) of para-
21 graph (3).

22 “(5) Notwithstanding any other provision of Federal
23 law and in addition to any other remedy provided under
24 Federal or State law, if the court, on its own motion or
25 on the motion of the United States trustee or the debtor,



1 finds that a person intentionally violated this section, or
2 engaged in a clear and consistent pattern or practice of
3 violating this section, the court may—

4 “(A) enjoin the violation of such section; or

5 “(B) impose an appropriate civil penalty
6 against such person.

7 “(d) No provision of this section, section 527, or sec-
8 tion 528 shall—

9 “(1) annul, alter, affect, or exempt any person
10 subject to such sections from complying with any
11 law of any State except to the extent that such law
12 is inconsistent with those sections, and then only to
13 the extent of the inconsistency; or

14 “(2) be deemed to limit or curtail the authority
15 or ability—

16 “(A) of a State or subdivision or instru-
17 mentality thereof, to determine and enforce
18 qualifications for the practice of law under the
19 laws of that State; or

20 “(B) of a Federal court to determine and
21 enforce the qualifications for the practice of law
22 before that court.”.

23 (b) CONFORMING AMENDMENT.—The table of sec-
24 tions for chapter 5 of title 11, United States Code, is



1 amended by inserting after the item relating to section
2 525, the following:

“526. Restrictions on debt relief agencies.”.

3 **SEC. 228. DISCLOSURES.**

4 (a) DISCLOSURES.—Subchapter II of chapter 5 of
5 title 11, United States Code, as amended by section 227,
6 is amended by adding at the end the following:

7 **“§ 527. Disclosures**

8 “(a) A debt relief agency providing bankruptcy assist-
9 ance to an assisted person shall provide—

10 “(1) the written notice required under section
11 342(b)(1); and

12 “(2) to the extent not covered in the written no-
13 tice described in paragraph (1), and not later than
14 3 business days after the first date on which a debt
15 relief agency first offers to provide any bankruptcy
16 assistance services to an assisted person, a clear and
17 conspicuous written notice advising assisted persons
18 that—

19 “(A) all information that the assisted per-
20 son is required to provide with a petition and
21 thereafter during a case under this title is re-
22 quired to be complete, accurate, and truthful;

23 “(B) all assets and all liabilities are re-
24 quired to be completely and accurately disclosed
25 in the documents filed to commence the case,



1 and the replacement value of each asset as de-
2 fined in section 506 must be stated in those
3 documents where requested after reasonable in-
4 quiry to establish such value;

5 “(C) current monthly income, the amounts
6 specified in section 707(b)(2), and, in a case
7 under chapter 13 of this title, disposable income
8 (determined in accordance with section
9 707(b)(2)), are required to be stated after rea-
10 sonable inquiry; and

11 “(D) information that an assisted person
12 provides during their case may be audited pur-
13 suant to this title, and that failure to provide
14 such information may result in dismissal of the
15 case under this title or other sanction, including
16 a criminal sanction.

17 “(b) A debt relief agency providing bankruptcy assist-
18 ance to an assisted person shall provide each assisted per-
19 son at the same time as the notices required under sub-
20 section (a)(1) the following statement, to the extent appli-
21 cable, or one substantially similar. The statement shall be
22 clear and conspicuous and shall be in a single document
23 separate from other documents or notices provided to the
24 assisted person:



1 “‘IMPORTANT INFORMATION ABOUT BANK-
2 RUPTCY ASSISTANCE SERVICES FROM AN AT-
3 TORNEY OR BANKRUPTCY PETITION PRE-
4 PARER.

5 “‘If you decide to seek bankruptcy relief, you can
6 represent yourself, you can hire an attorney to represent
7 you, or you can get help in some localities from a bank-
8 ruptcy petition preparer who is not an attorney. THE
9 LAW REQUIRES AN ATTORNEY OR BANKRUPTCY
10 PETITION PREPARER TO GIVE YOU A WRITTEN
11 CONTRACT SPECIFYING WHAT THE ATTORNEY
12 OR BANKRUPTCY PETITION PREPARER WILL DO
13 FOR YOU AND HOW MUCH IT WILL COST. Ask to
14 see the contract before you hire anyone.

15 “‘The following information helps you understand
16 what must be done in a routine bankruptcy case to help
17 you evaluate how much service you need. Although bank-
18 ruptcy can be complex, many cases are routine.

19 “‘Before filing a bankruptcy case, either you or your
20 attorney should analyze your eligibility for different forms
21 of debt relief available under the Bankruptcy Code and
22 which form of relief is most likely to be beneficial for you.
23 Be sure you understand the relief you can obtain and its
24 limitations. To file a bankruptcy case, documents called
25 a Petition, Schedules and Statement of Financial Affairs,



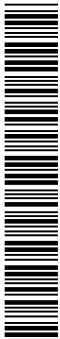
1 as well as in some cases a Statement of Intention need
2 to be prepared correctly and filed with the bankruptcy
3 court. You will have to pay a filing fee to the bankruptcy
4 court. Once your case starts, you will have to attend the
5 required first meeting of creditors where you may be ques-
6 tioned by a court official called a ‘trustee’ and by credi-
7 tors.

8 “‘If you choose to file a chapter 7 case, you may
9 be asked by a creditor to reaffirm a debt. You may want
10 help deciding whether to do so. A creditor is not permitted
11 to coerce you into reaffirming your debts.

12 “‘If you choose to file a chapter 13 case in which
13 you repay your creditors what you can afford over 3 to
14 5 years, you may also want help with preparing your chap-
15 ter 13 plan and with the confirmation hearing on your
16 plan which will be before a bankruptcy judge.

17 “‘If you select another type of relief under the Bank-
18 ruptcy Code other than chapter 7 or chapter 13, you will
19 want to find out what should be done from someone famil-
20 iar with that type of relief.

21 “‘Your bankruptcy case may also involve litigation.
22 You are generally permitted to represent yourself in litiga-
23 tion in bankruptcy court, but only attorneys, not bank-
24 ruptcy petition preparers, can give you legal advice.’.

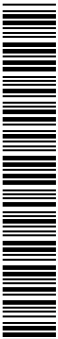


1 “(c) Except to the extent the debt relief agency pro-
2 vides the required information itself after reasonably dili-
3 gent inquiry of the assisted person or others so as to ob-
4 tain such information reasonably accurately for inclusion
5 on the petition, schedules or statement of financial affairs,
6 a debt relief agency providing bankruptcy assistance to an
7 assisted person, to the extent permitted by nonbankruptcy
8 law, shall provide each assisted person at the time re-
9 quired for the notice required under subsection (a)(1) rea-
10 sonably sufficient information (which shall be provided in
11 a clear and conspicuous writing) to the assisted person
12 on how to provide all the information the assisted person
13 is required to provide under this title pursuant to section
14 521, including—

15 “(1) how to value assets at replacement value,
16 determine current monthly income, the amounts
17 specified in section 707(b)(2) and, in a chapter 13
18 case, how to determine disposable income in accord-
19 ance with section 707(b)(2) and related calculations;

20 “(2) how to complete the list of creditors, in-
21 cluding how to determine what amount is owed and
22 what address for the creditor should be shown; and

23 “(3) how to determine what property is exempt
24 and how to value exempt property at replacement
25 value as defined in section 506.



1 “(d) A debt relief agency shall maintain a copy of
2 the notices required under subsection (a) of this section
3 for 2 years after the date on which the notice is given
4 the assisted person.”.

5 (b) CONFORMING AMENDMENT.—The table of sec-
6 tions for chapter 5 of title 11, United States Code, as
7 amended by section 227, is amended by inserting after the
8 item relating to section 526 the following:

“527. Disclosures.”.

9 **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

10 (a) ENFORCEMENT.—Subchapter II of chapter 5 of
11 title 11, United States Code, as amended by sections 227
12 and 228, is amended by adding at the end the following:

13 **“§ 528. Requirements for debt relief agencies**

14 “(a) A debt relief agency shall—

15 “(1) not later than 5 business days after the
16 first date on which such agency provides any bank-
17 ruptcy assistance services to an assisted person, but
18 prior to such assisted person’s petition under this
19 title being filed, execute a written contract with such
20 assisted person that explains clearly and
21 conspicuously—

22 “(A) the services such agency will provide
23 to such assisted person; and

24 “(B) the fees or charges for such services,
25 and the terms of payment;



1 “(2) provide the assisted person with a copy of
2 the fully executed and completed contract;

3 “(3) clearly and conspicuously disclose in any
4 advertisement of bankruptcy assistance services or of
5 the benefits of bankruptcy directed to the general
6 public (whether in general media, seminars or spe-
7 cific mailings, telephonic or electronic messages, or
8 otherwise) that the services or benefits are with re-
9 spect to bankruptcy relief under this title; and

10 “(4) clearly and conspicuously use the following
11 statement in such advertisement: ‘We are a debt re-
12 lief agency. We help people file for bankruptcy relief
13 under the Bankruptcy Code.’ or a substantially simi-
14 lar statement.

15 “(b)(1) An advertisement of bankruptcy assistance
16 services or of the benefits of bankruptcy directed to the
17 general public includes—

18 “(A) descriptions of bankruptcy assistance in
19 connection with a chapter 13 plan whether or not
20 chapter 13 is specifically mentioned in such adver-
21 tisement; and

22 “(B) statements such as ‘federally supervised
23 repayment plan’ or ‘Federal debt restructuring help’
24 or other similar statements that could lead a reason-
25 able consumer to believe that debt counseling was



1 being offered when in fact the services were directed
2 to providing bankruptcy assistance with a chapter
3 13 plan or other form of bankruptcy relief under
4 this title.

5 “(2) An advertisement, directed to the general public,
6 indicating that the debt relief agency provides assistance
7 with respect to credit defaults, mortgage foreclosures, evic-
8 tion proceedings, excessive debt, debt collection pressure,
9 or inability to pay any consumer debt shall—

10 “(A) disclose clearly and conspicuously in such
11 advertisement that the assistance may involve bank-
12 ruptcy relief under this title; and

13 “(B) include the following statement: ‘We are a
14 debt relief agency. We help people file for bank-
15 ruptcy relief under the Bankruptcy Code.’ or a sub-
16 stantially similar statement.”.

17 (b) CONFORMING AMENDMENT.—The table of sec-
18 tions for chapter 5 of title 11, United States Code, as
19 amended by section 227 and 228, is amended by inserting
20 after the item relating to section 527, the following:

“528. Requirements for debt relief agencies.”.

21 **SEC. 230. GAO STUDY.**

22 (a) STUDY.—Not later than 270 days after the date
23 of enactment of this Act, the Comptroller General of the
24 United States shall conduct a study of the feasibility, ef-
25 fectiveness, and cost of requiring trustees appointed under



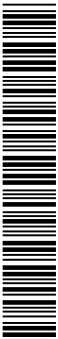
1 title 11, United States Code, or the bankruptcy courts,
2 to provide to the Office of Child Support Enforcement
3 promptly after the commencement of cases by debtors who
4 are individuals under such title, the names and social secu-
5 rity account numbers of such debtors for the purposes of
6 allowing such Office to determine whether such debtors
7 have outstanding obligations for child support (as deter-
8 mined on the basis of information in the Federal Case
9 Registry or other national database).

10 (b) REPORT.—Not later than 300 days after the date
11 of enactment of this Act, the Comptroller General shall
12 submit to the President pro tempore of the Senate and
13 the Speaker of the House of Representatives a report con-
14 taining the results of the study required by subsection (a).

15 **SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**
16 **FORMATION.**

17 (a) LIMITATION.—Section 363(b)(1) of title 11,
18 United States Code, is amended by striking the period at
19 the end and inserting the following:

20 “, except that if the debtor in connection with offering
21 a product or a service discloses to an individual a policy
22 prohibiting the transfer of personally identifiable informa-
23 tion about individuals to persons that are not affiliated
24 with the debtor and if such policy is in effect on the date
25 of the commencement of the case, then the trustee may



1 not sell or lease personally identifiable information to any
2 person unless—

3 “(A) such sale or such lease is consistent with
4 such policy; or

5 “(B) after appointment of a consumer privacy
6 ombudsman in accordance with section 332, and
7 after notice and a hearing, the court approves such
8 sale or such lease—

9 “(i) giving due consideration to the facts,
10 circumstances, and conditions of such sale or
11 such lease; and

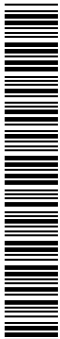
12 “(ii) finding that no showing was made
13 that such sale or such lease would violate appli-
14 cable nonbankruptcy law.”.

15 (b) DEFINITION.—Section 101 of title 11, United
16 States Code, is amended by inserting after paragraph (41)
17 the following:

18 “(41A) ‘personally identifiable information’
19 means—

20 “(A) if provided by an individual to the
21 debtor in connection with obtaining a product
22 or a service from the debtor primarily for per-
23 sonal, family, or household purposes—

24 “(i) the first name (or initial) and last
25 name of such individual, whether given at



1 birth or time of adoption, or resulting from
2 a lawful change of name;

3 “(ii) the geographical address of a
4 physical place of residence of such indi-
5 vidual;

6 “(iii) an electronic address (including
7 an e-mail address) of such individual;

8 “(iv) a telephone number dedicated to
9 contacting such individual at such physical
10 place of residence;

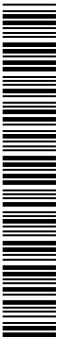
11 “(v) a social security account number
12 issued to such individual; or

13 “(vi) the account number of a credit
14 card issued to such individual; or

15 “(B) if identified in connection with 1 or
16 more of the items of information specified in
17 subparagraph (A)—

18 “(i) a birth date, the number of a cer-
19 tificate of birth or adoption, or a place of
20 birth; or

21 “(ii) any other information concerning
22 an identified individual that, if disclosed,
23 will result in contacting or identifying such
24 individual physically or electronically;”.



1 **SEC. 232. CONSUMER PRIVACY OMBUDSMAN.**

2 (a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of
3 the United States Code is amended by inserting after sec-
4 tion 331 the following:

5 **“§ 332. Consumer privacy ombudsman**

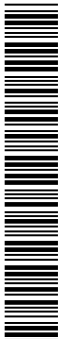
6 “(a) If a hearing is required under section
7 363(b)(1)(B), the court shall order the United States
8 trustee to appoint, not later than 5 days before the com-
9 mencement of the hearing, 1 disinterested person (other
10 than the United States trustee) to serve as the consumer
11 privacy ombudsman in the case and shall require that no-
12 tice of such hearing be timely given to such ombudsman.

13 “(b) The consumer privacy ombudsman may appear
14 and be heard at such hearing and shall provide to the
15 court information to assist the court in its consideration
16 of the facts, circumstances, and conditions of the proposed
17 sale or lease of personally identifiable information under
18 section 363(b)(1)(B). Such information may include pres-
19 entation of—

20 “(1) the debtor’s privacy policy;

21 “(2) the potential losses or gains of privacy to
22 consumers if such sale or such lease is approved by
23 the court;

24 “(3) the potential costs or benefits to con-
25 sumers if such sale or such lease is approved by the
26 court; and



1 “(4) the potential alternatives that would miti-
2 gate potential privacy losses or potential costs to
3 consumers.

4 “(c) A consumer privacy ombudsman shall not dis-
5 close any personally identifiable information obtained by
6 the ombudsman under this title.”.

7 (b) COMPENSATION OF CONSUMER PRIVACY OM-
8 BUDSMAN.—Section 330(a)(1) of title 11, United States
9 Code, is amended in the matter preceding subparagraph
10 (A), by inserting “a consumer privacy ombudsman ap-
11 pointed under section 332,” before “an examiner”.

12 (c) CONFORMING AMENDMENT.—The table of sec-
13 tions for subchapter II of chapter 3 of title 11, United
14 States Code, is amended by adding at the end the fol-
15 lowing:

 “332. Consumer privacy ombudsman.”.

16 **SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF**
17 **MINOR CHILDREN.**

18 (a) PROHIBITION.—Title 11 of the United States
19 Code, as amended by section 106, is amended by inserting
20 after section 111 the following:

21 **“§ 112. Prohibition on disclosure of name of minor**
22 **children**

23 “The debtor may be required to provide information
24 regarding a minor child involved in matters under this title
25 but may not be required to disclose in the public records



1 in the case the name of such minor child. The debtor may
2 be required to disclose the name of such minor child in
3 a nonpublic record that is maintained by the court and
4 made available by the court for examination by the United
5 States trustee, the trustee, and the auditor (if any) serving
6 under section 586(f) of title 28, in the case. The court,
7 the United States trustee, the trustee, and such auditor
8 shall not disclose the name of such minor child maintained
9 in such nonpublic record.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for chapter 1 of title 11, United States Code, as amended
12 by section 106, is amended by inserting after the item re-
13 lating to section 111 the following:

“112. Prohibition on disclosure of name of minor children.”.

14 (c) CONFORMING AMENDMENT.—Section 107(a) of
15 title 11, United States Code, is amended by inserting “and
16 subject to section 112” after “section”.

17 **TITLE III —DISCOURAGING**
18 **BANKRUPTCY ABUSE**

19 **SEC. 301. TECHNICAL AMENDMENTS.**

20 Section 523(a)(17) of title 11, United States Code,
21 is amended—

22 (1) by striking “by a court” and inserting “on
23 a prisoner by any court”;



1 (2) by striking “section 1915(b) or (f)” and in-
2 serting “subsection (b) or (f)(2) of section 1915”;
3 and

4 (3) by inserting “(or a similar non-Federal
5 law)” after “title 28” each place it appears.

6 **SEC. 302. CURBING ABUSIVE FILINGS.**

7 (a) IN GENERAL.—Section 362(d) of title 11, United
8 States Code, is amended—

9 (1) in paragraph (2), by striking “or” at the
10 end;

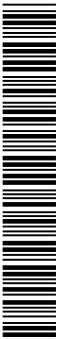
11 (2) in paragraph (3), by striking the period at
12 the end and inserting “; or”; and

13 (3) by adding at the end the following:

14 “(4) with respect to a stay of an act against
15 real property under subsection (a), by a creditor
16 whose claim is secured by an interest in such real
17 property, if the court finds that the filing of the pe-
18 tition was part of a scheme to delay, hinder, and de-
19 fraud creditors that involved either—

20 “(A) transfer of all or part ownership of,
21 or other interest in, such real property without
22 the consent of the secured creditor or court ap-
23 proval; or

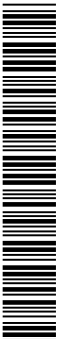
24 “(B) multiple bankruptcy filings affecting
25 such real property.



1 If recorded in compliance with applicable State laws gov-
2 erning notices of interests or liens in real property, an
3 order entered under paragraph (4) shall be binding in any
4 other case under this title purporting to affect such real
5 property filed not later than 2 years after the date of the
6 entry of such order by the court, except that a debtor in
7 a subsequent case under this title may move for relief from
8 such order based upon changed circumstances or for good
9 cause shown, after notice and a hearing. Any Federal,
10 State, or local governmental unit that accepts notices of
11 interests or liens in real property shall accept any certified
12 copy of an order described in this subsection for indexing
13 and recording.”.

14 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
15 United States Code, as amended by section 224, is amend-
16 ed by inserting after paragraph (19), the following:

17 “(20) under subsection (a), of any act to en-
18 force any lien against or security interest in real
19 property following entry of the order under sub-
20 section (d)(4) as to such real property in any prior
21 case under this title, for a period of 2 years after
22 the date of the entry of such an order, except that
23 the debtor, in a subsequent case under this title,
24 may move for relief from such order based upon



1 changed circumstances or for other good cause
2 shown, after notice and a hearing;

3 “(21) under subsection (a), of any act to en-
4 force any lien against or security interest in real
5 property—

6 “(A) if the debtor is ineligible under sec-
7 tion 109(g) to be a debtor in a case under this
8 title; or

9 “(B) if the case under this title was filed
10 in violation of a bankruptcy court order in a
11 prior case under this title prohibiting the debtor
12 from being a debtor in another case under this
13 title;”.

14 **SEC. 303. GIVING SECURED CREDITORS FAIR TREATMENT**
15 **IN CHAPTER 13.**

16 (b) RESTORING THE FOUNDATION FOR SECURED
17 CREDIT.—Section 1325(a) of title 11, United States Code,
18 is amended by adding at the end the following:

19 “For purposes of paragraph (5), section 506 shall not
20 apply to a claim described in that paragraph if the creditor
21 has a purchase money security interest securing the debt
22 that is the subject of the claim, the debt was incurred
23 within the 365-day preceding the date of the filing of the
24 petition, and the collateral for that debt consists of a
25 motor vehicle (as defined in section 30102 of title 49) ac-



1 quired for the personal use of the debtor, or if collateral
2 for that debt consists of any other thing of value, if the
3 debt was incurred during the 180-day period preceding
4 that filing.”.

5 **SEC. 304. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

6 Section 522(b)(3) of title 11, United States Code, as
7 so designated by section 106, is amended—

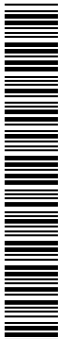
8 (1) in subparagraph (A)—

9 (A) by striking “180 days” and inserting
10 “730 days”; and

11 (B) by striking “, or for a longer portion
12 of such 180-day period than in any other place”
13 and inserting “or if the debtor’s domicile has
14 not been located at a single State for such 730-
15 day period, the place in which the debtor’s
16 domicile was located for 180 days immediately
17 preceding the 730-day period or for a longer
18 portion of such 180-day period than in any
19 other place”; and

20 (2) by adding at the end the following:

21 “If the effect of the domiciliary requirement under sub-
22 paragraph (A) is to render the debtor ineligible for any
23 exemption, the debtor may elect to exempt property that
24 is specified under subsection (d).”.



1 **SEC. 305. REDUCTION OF HOMESTEAD EXEMPTION FOR**
2 **FRAUD.**

3 Section 522 of title 11, United States Code, as
4 amended by section 224, is amended—

5 (1) in subsection (b)(3)(A), as so designated by
6 this Act, by inserting “subject to subsections (o) and
7 (p),” before “any property”; and

8 (2) by adding at the end the following:

9 “(o) For purposes of subsection (b)(3)(A), and not-
10 withstanding subsection (a), the value of an interest in—

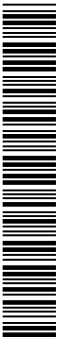
11 “(1) real or personal property that the debtor
12 or a dependent of the debtor uses as a residence;

13 “(2) a cooperative that owns property that the
14 debtor or a dependent of the debtor uses as a resi-
15 dence;

16 “(3) a burial plot for the debtor or a dependent
17 of the debtor; or

18 “(4) real or personal property that the debtor
19 or a dependent of the debtor claims as a homestead;

20 shall be reduced to the extent that such value is attrib-
21 utable to any portion of any property that the debtor dis-
22 posed of in the 10-year period ending on the date of the
23 filing of the petition with the intent to hinder, delay, or
24 defraud a creditor and that the debtor could not exempt,
25 or that portion that the debtor could not exempt, under



1 subsection (b), if on such date the debtor had held the
2 property so disposed of.”.

3 **SEC. 306. LIMITATIONS ON HOMESTEAD EXEMPTION.**

4 (a) EXEMPTIONS.—Section 522 of title 11, United
5 States Code, as amended by sections 224 and 308, is
6 amended by adding at the end the following:

7 “(p)(1) Except as provided in paragraph (2) of this
8 subsection and sections 544 and 548, as a result of elect-
9 ing under subsection (b)(3)(A) to exempt property under
10 State or local law, a debtor may not exempt any amount
11 of interest that was acquired by the debtor during the
12 1215-day period preceding the date of the filing of the
13 petition that exceeds in the aggregate \$125,000 in value
14 in—

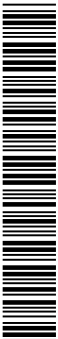
15 “(A) real or personal property that the debtor
16 or a dependent of the debtor uses as a residence;

17 “(B) a cooperative that owns property that the
18 debtor or a dependent of the debtor uses as a resi-
19 dence;

20 “(C) a burial plot for the debtor or a dependent
21 of the debtor; or

22 “(D) real or personal property that the debtor
23 or dependent of the debtor claims as a homestead.

24 “(2)(A) The limitation under paragraph (1) shall not
25 apply to an exemption claimed under subsection (b)(3)(A)



1 by a family farmer for the principal residence of such
2 farmer.

3 “(B) For purposes of paragraph (1), any amount of
4 such interest does not include any interest transferred
5 from a debtor’s previous principal residence (which was
6 acquired prior to the beginning of such 1215-day period)
7 into the debtor’s current principal residence, if the debt-
8 or’s previous and current residences are located in the
9 same State.

10 “(q)(1) As a result of electing under subsection
11 (b)(3)(A) to exempt property under State or local law, a
12 debtor may not exempt any amount of an interest in prop-
13 erty described in subparagraphs (A), (B), (C), and (D)
14 of subsection (p)(1) which exceeds in the aggregate
15 \$125,000 if—

16 “(A) the court determines, after notice and a
17 hearing, that the debtor has been convicted of a fel-
18 ony (as defined in section 3156 of title 18), which
19 under the circumstances, demonstrates that the fil-
20 ing of the case was an abuse of the provisions of this
21 title; or

22 “(B) the debtor owes a debt arising from—

23 “(i) any violation of the Federal securities
24 laws (as defined in section 3(a)(47) of the Secu-
25 rities Exchange Act of 1934), any State securi-



1 ties laws, or any regulation or order issued
2 under Federal securities laws or State securities
3 laws;

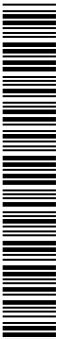
4 “(ii) fraud, deceit, or manipulation in a fi-
5 duciary capacity or in connection with the pur-
6 chase or sale of any security registered under
7 section 12 or 15(d) of the Securities Exchange
8 Act of 1934 or under section 6 of the Securities
9 Act of 1933;

10 “(iii) any civil remedy under section 1964
11 of title 18; or

12 “(iv) any criminal act, intentional tort, or
13 willful or reckless misconduct that caused seri-
14 ous physical injury or death to another indi-
15 vidual in the preceding 5 years.

16 “(2) Paragraph (1) shall not apply to the extent the
17 amount of an interest in property described in subpara-
18 graphs (A), (B), (C), and (D) of subsection (p)(1) is rea-
19 sonably necessary for the support of the debtor and any
20 dependent of the debtor.”.

21 (b) ADJUSTMENT OF DOLLAR AMOUNTS.—Para-
22 graphs (1) and (2) of section 104(b) of title 11, United
23 States Code, as amended by section 224, are amended by
24 inserting “522(p), 522(q),” after “522(n),”.



1 **SEC. 307. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**
2 **PANT CONTRIBUTIONS AND OTHER PROP-**
3 **ERTY FROM THE ESTATE.**

4 Section 541(b) of title 11, United States Code, as
5 amended by section 225, is amended by adding after para-
6 graph (6), as added by section 225(a)(1)(C), the following:

7 “(7) any amount—

8 “(A) withheld by an employer from the
9 wages of employees for payment as
10 contributions—

11 “(i) to—

12 “(I) an employee benefit plan
13 that is subject to title I of the Em-
14 ployee Retirement Income Security
15 Act of 1974 or under an employee
16 benefit plan which is a governmental
17 plan under section 414(d) of the In-
18 ternal Revenue Code of 1986;

19 “(II) a deferred compensation
20 plan under section 457 of the Internal
21 Revenue Code of 1986; or

22 “(III) a tax-deferred annuity
23 under section 403(b) of the Internal
24 Revenue Code of 1986;



1 except that such amount under this sub-
2 paragraph shall not constitute disposable
3 income as defined in section 1325(b)(2); or

4 “(ii) to a health insurance plan regu-
5 lated by State law whether or not subject
6 to such title; or

7 “(B) received by an employer from employ-
8 ees for payment as contributions—

9 “(i) to—

10 “(I) an employee benefit plan
11 that is subject to title I of the Em-
12 ployee Retirement Income Security
13 Act of 1974 or under an employee
14 benefit plan which is a governmental
15 plan under section 414(d) of the In-
16 ternal Revenue Code of 1986;

17 “(II) a deferred compensation
18 plan under section 457 of the Internal
19 Revenue Code of 1986; or

20 “(III) a tax-deferred annuity
21 under section 403(b) of the Internal
22 Revenue Code of 1986;

23 except that such amount under this sub-
24 paragraph shall not constitute disposable



1 income, as defined in section 1325(b)(2);
2 or
3 “(ii) to a health insurance plan regu-
4 lated by State law whether or not subject
5 to such title;”.

6 **SEC. 308. UNITED STATES TRUSTEE PROGRAM FILING FEE**
7 **INCREASE.**

8 (a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE
9 11, UNITED STATES CODE.—Section 1930(a) of title 28,
10 United States Code, is amended by striking paragraph (1)
11 and inserting the following:

12 “(1) For a case commenced—

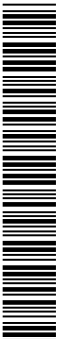
13 “(A) under chapter 7 of title 11, \$160; or

14 “(B) under chapter 13 of title 11, \$150.”.

15 (b) UNITED STATES TRUSTEE SYSTEM FUND.—Sec-
16 tion 589a(b) of title 28, United States Code, is amended—
17 (1) by striking paragraph (1) and inserting the
18 following:

19 “(1)(A) 40.63 percent of the fees collected
20 under section 1930(a)(1)(A) of this title in cases
21 commenced under chapter 7 of title 11; and

22 “(B) 70.00 percent of the fees collected under
23 section 1930(a)(1)(B) of this title in cases com-
24 menced under chapter 13 of title 11;”;



1 (2) in paragraph (2), by striking “one-half”
2 and inserting “three-fourths”; and
3 (3) in paragraph (4), by striking “one-half”
4 and inserting “100 percent”.

5 (c) COLLECTION AND DEPOSIT OF MISCELLANEOUS
6 BANKRUPTCY FEES.—Section 406(b) of the Judiciary Ap-
7 propriations Act, 1990 (28 U.S.C. 1931 note) is amended
8 by striking “pursuant to 28 U.S.C. section 1930(b)” and
9 all that follows through “28 U.S.C. section 1931” and in-
10 serting “under section 1930(b) of title 28, United States
11 Code, and 31.25 percent of the fees collected under section
12 1930(a)(1)(A) of that title, 30.00 percent of the fees col-
13 lected under section 1930(a)(1)(B) of that title, and 25
14 percent of the fees collected under section 1930(a)(3) of
15 that title shall be deposited as offsetting receipts to the
16 fund established under section 1931 of that title”.

17 **SEC. 309. SHARING OF COMPENSATION.**

18 Section 504 of title 11, United States Code, is
19 amended by adding at the end the following:

20 “(c) This section shall not apply with respect to shar-
21 ing, or agreeing to share, compensation with a bona fide
22 public service attorney referral program that operates in
23 accordance with non-Federal law regulating attorney re-
24 ferral services and with rules of professional responsibility
25 applicable to attorney acceptance of referrals.”.



1 **SEC. 310. DEFAULTS BASED ON NONMONETARY OBLIGA-**
2 **TIONS.**

3 (a) EXECUTORY CONTRACTS AND UNEXPIRED
4 LEASES.—Section 365 of title 11, United States Code, is
5 amended—

6 (1) in subsection (b)—

7 (A) in paragraph (1)(A), by striking the
8 semicolon at the end and inserting the fol-
9 lowing: “other than a default that is a breach
10 of a provision relating to the satisfaction of any
11 provision (other than a penalty rate or penalty
12 provision) relating to a default arising from any
13 failure to perform nonmonetary obligations
14 under an unexpired lease of real property, if it
15 is impossible for the trustee to cure such de-
16 fault by performing nonmonetary acts at and
17 after the time of assumption, except that if
18 such default arises from a failure to operate in
19 accordance with a nonresidential real property
20 lease, then such default shall be cured by per-
21 formance at and after the time of assumption
22 in accordance with such lease, and pecuniary
23 losses resulting from such default shall be com-
24 pensated in accordance with the provisions of
25 this paragraph;” and



1 (B) in paragraph (2)(D), by striking “pen-
2 alty rate or provision” and inserting “penalty
3 rate or penalty provision”;

4 (2) in subsection (c)—

5 (A) in paragraph (2), by inserting “or” at
6 the end;

7 (B) in paragraph (3), by striking “; or” at
8 the end and inserting a period; and

9 (C) by striking paragraph (4);
10 (3) in subsection (d)—

11 (A) by striking paragraphs (5) through
12 (9); and

13 (B) by redesignating paragraph (10) as
14 paragraph (5); and

15 (4) in subsection (f)(1) by striking “; except
16 that” and all that follows through the end of the
17 paragraph and inserting a period.

18 (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-
19 tion 1124(2) of title 11, United States Code, is
20 amended—

21 (1) in subparagraph (A), by inserting “or of a
22 kind that section 365(b)(2) expressly does not re-
23 quire to be cured” before the semicolon at the end;

24 (2) in subparagraph (C), by striking “and” at
25 the end;



1 (3) by redesignating subparagraph (D) as sub-
2 paragraph (E); and

3 (4) by inserting after subparagraph (C) the fol-
4 lowing:

5 “(D) if such claim or such interest arises
6 from any failure to perform a nonmonetary ob-
7 ligation, other than a default arising from fail-
8 ure to operate a nonresidential real property
9 lease subject to section 365(b)(1)(A), com-
10 pensates the holder of such claim or such inter-
11 est (other than the debtor or an insider) for any
12 actual pecuniary loss incurred by such holder as
13 a result of such failure; and”.

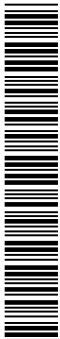
14 **SEC. 311. CLARIFICATION OF POSTPETITION WAGES AND**
15 **BENEFITS.**

16 Section 503(b)(1)(A) of title 11, United States Code,
17 is amended to read as follows:

18 “(A) the actual, necessary costs and expenses of pre-
19 serving the estate including—

20 “(i) wages, salaries, and commissions for
21 services rendered after the commencement of
22 the case; and

23 “(ii) wages and benefits awarded pursuant
24 to a judicial proceeding or a proceeding of the
25 National Labor Relations Board as back pay



1 attributable to any period of time occurring
2 after commencement of the case under this
3 title, as a result of a violation of Federal or
4 State law by the debtor, without regard to the
5 time of the occurrence of unlawful conduct on
6 which such award is based or to whether any
7 services were rendered, if the court determines
8 that payment of wages and benefits by reason
9 of the operation of this clause will not substan-
10 tially increase the probability of layoff or termi-
11 nation of current employees, or of nonpayment
12 of domestic support obligations, during the case
13 under this title;”.

14 **SEC. 312. DELAY OF DISCHARGE DURING PENDENCY OF**
15 **CERTAIN PROCEEDINGS.**

16 (a) CHAPTER 7.—Section 727(a) of title 11, United
17 States Code, as amended by section 106, is amended—

18 (1) in paragraph (10), by striking “or” at the
19 end;

20 (2) in paragraph (11) by striking the period at
21 the end and inserting “; or”; and

22 (3) by inserting after paragraph (11) the fol-
23 lowing:

24 “(12) the court after notice and a hearing held
25 not more than 10 days before the date of the entry



1 of the order granting the discharge finds that there
2 is reasonable cause to believe that—

3 “(A) section 522(q)(1) may be applicable
4 to the debtor; and

5 “(B) there is pending any proceeding in
6 which the debtor may be found guilty of a fel-
7 ony of the kind described in section
8 522(q)(1)(A) or liable for a debt of the kind de-
9 scribed in section 522(q)(1)(B).”.

10 (b) CHAPTER 11.—Section 1141(d) of title 11,
11 United States Code, as amended by section 321, is amend-
12 ed by adding at the end the following:

13 “(C) unless after notice and a hearing held not
14 more than 10 days before the date of the entry of
15 the order granting the discharge, the court finds
16 that there is no reasonable cause to believe that—

17 “(i) section 522(q)(1) may be applicable to
18 the debtor; and

19 “(ii) there is pending any proceeding in
20 which the debtor may be found guilty of a fel-
21 ony of the kind described in section
22 522(q)(1)(A) or liable for a debt of the kind de-
23 scribed in section 522(q)(1)(B).”.

24 (c) CHAPTER 12.—Section 1228 of title 11, United
25 States Code, is amended—



1 (1) in subsection (a) by striking “As” and in-
2 serting “Subject to subsection (d), as”,

3 (2) in subsection (b) by striking “At” and in-
4 serting “Subject to subsection (d), at”, and

5 (3) by adding at the end the following:

6 “(f) The court may not grant a discharge under this
7 chapter unless the court after notice and a hearing held
8 not more than 10 days before the date of the entry of
9 the order granting the discharge finds that there is no rea-
10 sonable cause to believe that—

11 “(1) section 522(q)(1) may be applicable to the
12 debtor; and

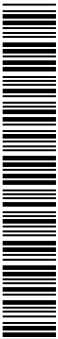
13 “(2) there is pending any proceeding in which
14 the debtor may be found guilty of a felony of the
15 kind described in section 522(q)(1)(A) or liable for
16 a debt of the kind described in section
17 522(q)(1)(B).”.

18 (d) CHAPTER 13.—Section 1328 of title 11, United
19 States Code, as amended by section 106, is amended—

20 (1) in subsection (a) by striking “As” and in-
21 serting “Subject to subsection (d), as”,

22 (2) in subsection (b) by striking “At” and in-
23 serting “Subject to subsection (d), at”, and

24 (3) by adding at the end the following:



1 “(h) The court may not grant a discharge under this
2 chapter unless the court after notice and a hearing held
3 not more than 10 days before the date of the entry of
4 the order granting the discharge finds that there is no rea-
5 sonable cause to believe that—

6 “(1) section 522(q)(1) may be applicable to the
7 debtor; and

8 “(2) there is pending any proceeding in which
9 the debtor may be found guilty of a felony of the
10 kind described in section 522(q)(1)(A) or liable for
11 a debt of the kind described in section
12 522(q)(1)(B).”.

13 **SEC. 313. NONDISCHARGEABILITY OF DEBTS INCURRED**
14 **THROUGH VIOLATIONS OF CIVIL RIGHTS**
15 **LAWS.**

16 (a) DEBTS INCURRED THROUGH VIOLATIONS OF
17 CIVIL RIGHTS LAWS.—Section 523(a) of title 11, United
18 States Code, as amended by section 224, is amended—

19 (1) in paragraph (18) by striking “or” at the
20 end;

21 (2) in paragraph (19) by striking the period at
22 the end and inserting “; or”; and

23 (3) by adding at the end the following:

24 “(20) that results from any judgment, order,
25 consent order, or decree entered in any Federal or



1 State court, or contained in any settlement agree-
2 ment entered into by the debtor (including any
3 court-ordered damages, fine, penalty, or attorney fee
4 or cost owed by the debtor), that arises from—

5 “(A) the violation by the debtor of any of-
6 fense described in section 244 (relating to dis-
7 crimination against a person wearing the uni-
8 form of the Armed Forces), section 245 (relat-
9 ing to federally protected rights), section 247
10 (relating to damage to religious property; ob-
11 struction of persons in the free exercise of reli-
12 gious beliefs), or section 248 (relating to the
13 freedom of access to clinic entrances), of title
14 18, United States Code;

15 “(B) an offense under State law that con-
16 sists of conduct that would be a civil rights
17 crime described in subparagraph (A) of this
18 paragraph; or

19 “(C) a valid court order enforcing a civil
20 rights law described in subparagraphs (A) or
21 (B) of this paragraph.”.

22 (b) RESTITUTION.—Section 523(a)(13) of title 11,
23 United States Code, is amended by inserting “or under
24 the criminal law of a State” after “title 18”.



1 **TITLE IV—GENERAL AND SMALL**
2 **BUSINESS BANKRUPTCY PRO-**
3 **VISIONS**

4 **Subtitle A—General Business**
5 **Bankruptcy Provisions**

6 **SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

7 (a) DEFINITION.—Section 101 of title 11, United
8 States Code, is amended by inserting after paragraph (48)
9 the following:

10 “(48A) ‘securities self regulatory organization’
11 means either a securities association registered with
12 the Securities and Exchange Commission under sec-
13 tion 15A of the Securities Exchange Act of 1934 or
14 a national securities exchange registered with the
15 Securities and Exchange Commission under section
16 6 of the Securities Exchange Act of 1934;”.

17 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
18 United States Code, as amended by sections 224, 303, and
19 311, is amended by inserting after paragraph (24) the fol-
20 lowing:

21 “(25) under subsection (a), of—

22 “(A) the commencement or continuation of
23 an investigation or action by a securities self
24 regulatory organization to enforce such organi-
25 zation’s regulatory power;



1 “(B) the enforcement of an order or deci-
2 sion, other than for monetary sanctions, ob-
3 tained in an action by such securities self regu-
4 latory organization to enforce such organiza-
5 tion’s regulatory power; or

6 “(C) any act taken by such securities self
7 regulatory organization to delist, delete, or
8 refuse to permit quotation of any stock that
9 does not meet applicable regulatory require-
10 ments;”.

11 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**
12 **HOLDERS.**

13 Section 341 of title 11, United States Code, is
14 amended by adding at the end the following:

15 “(e) Notwithstanding subsections (a) and (b), the
16 court, on the request of a party in interest and after notice
17 and a hearing, for cause may order that the United States
18 trustee not convene a meeting of creditors or equity secu-
19 rity holders if the debtor has filed a plan as to which the
20 debtor solicited acceptances prior to the commencement
21 of the case.”.

22 **SEC. 403. EXECUTORY CONTRACTS AND UNEXPIRED**
23 **LEASES.**

24 (a) IN GENERAL.—Section 365(d)(4) of title 11,
25 United States Code, is amended to read as follows:



1 “(4)(A) Subject to subparagraph (B), an unexpired
2 lease of nonresidential real property under which the debt-
3 or is the lessee shall be deemed rejected, and the trustee
4 shall immediately surrender that nonresidential real prop-
5 erty to the lessor, if the trustee does not assume or reject
6 the unexpired lease by the earlier of—

7 “(i) the date that is 120 days after the date of
8 the order for relief; or

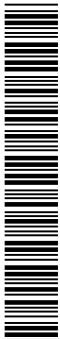
9 “(ii) the date of the entry of an order con-
10 firming a plan.

11 “(B)(i) The court may extend the period determined
12 under subparagraph (A), prior to the expiration of the
13 120-day period, for 90 days on the motion of the trustee
14 or lessor for cause.

15 “(ii) If the court grants an extension under clause
16 (i), the court may grant a subsequent extension only upon
17 prior written consent of the lessor in each instance.

18 “(iii) The court may extend the time periods specified
19 in this paragraph if the debtor establishes by clear and
20 convincing evidence that an extension is justified by cir-
21 cumstances beyond the debtor’s control that were not fore-
22 seeable on the date of the order for relief.”.

23 (b) EXCEPTION.—Section 365(f)(1) of title 11,
24 United States Code, is amended by striking “subsection”



1 the first place it appears and inserting “subsections (b)
2 and”.

3 **SEC. 404. CREDITORS AND EQUITY SECURITY HOLDERS**
4 **COMMITTEES.**

5 (a) APPOINTMENT.—Section 1102(a) of title 11,
6 United States Code, is amended by adding at the end the
7 following:

8 “(4) On request of a party in interest and after notice
9 and a hearing, the court may order the United States
10 trustee to change the membership of a committee ap-
11 pointed under this subsection, if the court determines that
12 the change is necessary to ensure adequate representation
13 of creditors or equity security holders. The court may
14 order the United States trustee to increase the number
15 of members of a committee to include a creditor that is
16 a small business concern (as described in section 3(a)(1)
17 of the Small Business Act), if the court determines that
18 the creditor holds claims (of the kind represented by the
19 committee) the aggregate amount of which, in comparison
20 to the annual gross revenue of that creditor, is dispropor-
21 tionately large.”.

22 (b) INFORMATION.—Section 1102(b) of title 11,
23 United States Code, is amended by adding at the end the
24 following:



1 “(3) A committee appointed under subsection (a)
2 shall—

3 “(A) provide access to information for creditors
4 who—

5 “(i) hold claims of the kind represented by
6 that committee; and

7 “(ii) are not appointed to the committee;

8 “(B) solicit and receive comments from the
9 creditors described in subparagraph (A); and

10 “(C) be subject to a court order that compels
11 any additional report or disclosure to be made to the
12 creditors described in subparagraph (A).”.

13 **SEC. 405. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**
14 **UNITED STATES CODE.**

15 Section 330(a) of title 11, United States Code, is
16 amended—

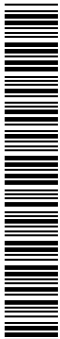
17 (1) in paragraph (3)—

18 (A) by striking “(A) In” and inserting
19 “In”; and

20 (B) by inserting “to an examiner, trustee
21 under chapter 11, or professional person” after
22 “awarded”; and

23 (2) by adding at the end the following:

24 “(7) In determining the amount of reasonable com-
25 pensation to be awarded to a trustee, the court shall treat



1 such compensation as a commission, based on section
2 326.”.

3 **SEC. 406. POSTPETITION DISCLOSURE AND SOLICITATION.**

4 Section 1125 of title 11, United States Code, is
5 amended by adding at the end the following:

6 “(g) Notwithstanding subsection (b), an acceptance
7 or rejection of the plan may be solicited from a holder
8 of a claim or interest if such solicitation complies with ap-
9 plicable nonbankruptcy law and if such holder was solic-
10 ited before the commencement of the case in a manner
11 complying with applicable nonbankruptcy law.”.

12 **SEC. 407. VENUE OF CERTAIN PROCEEDINGS.**

13 Section 1409(b) of title 28, United States Code, is
14 amended by inserting “, or a debt (excluding a consumer
15 debt) against a noninsider of less than \$10,000,” after
16 “\$5,000”.

17 **SEC. 408. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

18 Section 1121(d) of title 11, United States Code, is
19 amended—

20 (1) by striking “On” and inserting “(1) Subject
21 to paragraph (2), on”; and

22 (2) by adding at the end the following:

23 “(2)(A) Unless the debtor establishes by clear and
24 convincing evidence that there are circumstances beyond
25 the debtor’s control that were not foreseeable on the date



1 of the order of relief, the 120-day period specified in para-
2 graph (1) may not be extended beyond a date that is 18
3 months after the date of the order for relief under this
4 chapter.

5 “(B) Unless the debtor establishes by clear and con-
6 vincing evidence that there are circumstances beyond the
7 debtor’s control that were not foreseeable on the date of
8 the order of relief, the 180-day period specified in para-
9 graph (1) may not be extended beyond a date that is 20
10 months after the date of the order for relief under this
11 chapter.”.

12 **SEC. 409. FEES ARISING FROM CERTAIN OWNERSHIP IN-**
13 **TERESTS.**

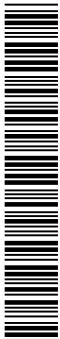
14 Section 523(a)(16) of title 11, United States Code,
15 is amended—

16 (1) by striking “dwelling” the first place it ap-
17 pears;

18 (2) by striking “ownership or” and inserting
19 “ownership,”;

20 (3) by striking “housing” the first place it ap-
21 pears; and

22 (4) by striking “but only” and all that follows
23 through “such period,” and inserting “or a lot in a
24 homeowners association, for as long as the debtor or
25 the trustee has a legal, equitable, or possessory own-



1 ership interest in such unit, such corporation, or
2 such lot,”.

3 **SEC. 410. FACTORS FOR COMPENSATION OF PROFES-**
4 **SIONAL PERSONS.**

5 Section 330(a)(3) of title 11, United States Code, is
6 amended—

7 (1) in subparagraph (D), by striking “and” at
8 the end;

9 (2) by redesignating subparagraph (E) as sub-
10 paragraph (F); and

11 (3) by inserting after subparagraph (D) the fol-
12 lowing:

13 “(E) with respect to a professional person,
14 whether the person is board certified or otherwise
15 has demonstrated skill and experience in the bank-
16 ruptcy field; and”.

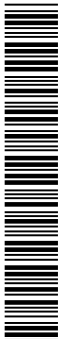
17 **SEC. 411. APPOINTMENT OF ELECTED TRUSTEE.**

18 Section 1104(b) of title 11, United States Code, is
19 amended—

20 (1) by inserting “(1)” after “(b)”; and

21 (2) by adding at the end the following:

22 “(2)(A) If an eligible, disinterested trustee is elected
23 at a meeting of creditors under paragraph (1), the United
24 States trustee shall file a report certifying that election.



1 “(B) Upon the filing of a report under subparagraph
2 (A)—

3 “(i) the trustee elected under paragraph (1)
4 shall be considered to have been selected and ap-
5 pointed for purposes of this section; and

6 “(ii) the service of any trustee appointed under
7 subsection (d) shall terminate.

8 “(C) The court shall resolve any dispute arising out
9 of an election described in subparagraph (A).”.

10 **SEC. 412. UTILITY SERVICE.**

11 Section 366 of title 11, United States Code, is
12 amended—

13 (1) in subsection (a), by striking “subsection
14 (b)” and inserting “subsections (b) and (c)”; and

15 (2) by adding at the end the following:

16 “(c)(1)(A) For purposes of this subsection, the term
17 ‘assurance of payment’ means—

18 “(i) a cash deposit;

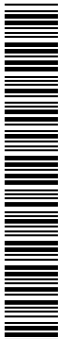
19 “(ii) a letter of credit;

20 “(iii) a certificate of deposit;

21 “(iv) a surety bond;

22 “(v) a prepayment of utility consumption; or

23 “(vi) another form of security that is mutually
24 agreed on between the utility and the debtor or the
25 trustee.



1 “(B) For purposes of this subsection an administra-
2 tive expense priority shall not constitute an assurance of
3 payment.

4 “(2) Subject to paragraphs (3) and (4), with respect
5 to a case filed under chapter 11, a utility referred to in
6 subsection (a) may alter, refuse, or discontinue utility
7 service, if during the 30-day period beginning on the date
8 of the filing of the petition, the utility does not receive
9 from the debtor or the trustee adequate assurance of pay-
10 ment for utility service that is satisfactory to the utility.

11 “(3)(A) On request of a party in interest and after
12 notice and a hearing, the court may order modification
13 of the amount of an assurance of payment under para-
14 graph (2).

15 “(B) In making a determination under this para-
16 graph whether an assurance of payment is adequate, the
17 court may not consider—

18 “(i) the absence of security before the date of
19 the filing of the petition;

20 “(ii) the payment by the debtor of charges for
21 utility service in a timely manner before the date of
22 the filing of the petition; or

23 “(iii) the availability of an administrative ex-
24 pense priority.



1 “(4) Notwithstanding any other provision of law, with
2 respect to a case subject to this subsection, a utility may
3 recover or set off against a security deposit provided to
4 the utility by the debtor before the date of the filing of
5 the petition without notice or order of the court.

6 “(5) The court may extend the time period specified
7 in paragraph (2) if the debtor establishes by clear and con-
8 vincing evidence that an extension is justified by cir-
9 cumstances beyond the debtor’s control that were not fore-
10 seeable on the date the assurance of payment was due.”.

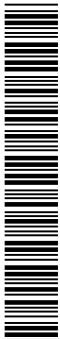
11 **SEC. 413. BANKRUPTCY FEES.**

12 Section 1930 of title 28, United States Code, is
13 amended—

14 (1) in subsection (a), by striking “Notwith-
15 standing section 1915 of this title, the” and insert-
16 ing “The”; and

17 (2) by adding at the end the following:

18 “(f)(1) Under the procedures prescribed by the Judi-
19 cial Conference of the United States, the district court or
20 the bankruptcy court may waive the filing fee in a case
21 under chapter 7 of title 11 for an individual if the court
22 determines that such individual has income less than 150
23 percent of the income official poverty line (as defined by
24 the Office of Management and Budget, and revised annu-
25 ally in accordance with section 673(2) of the Omnibus



1 Budget Reconciliation Act of 1981) applicable to a family
2 of the size involved and is unable to pay that fee in install-
3 ments. For purposes of this paragraph, the term ‘filing
4 fee’ means the filing required by subsection (a), or any
5 other fee prescribed by the Judicial Conference under sub-
6 sections (b) and (c) that is payable to the clerk upon the
7 commencement of a case under chapter 7.

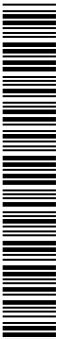
8 “(2) The district court or the bankruptcy court may
9 waive for such debtors other fees prescribed under sub-
10 sections (b) and (c).

11 “(3) This subsection does not restrict the district
12 court or the bankruptcy court from waiving, in accordance
13 with Judicial Conference policy, fees prescribed under this
14 section for other debtors and creditors.”.

15 **SEC. 414. EFFECT OF SALE OF ASSETS ON EMPLOYEE BENE-**
16 **FITS.**

17 Section 363(b) of title 11, United States Code, is
18 amended by adding at the end the following:

19 “(3) The court shall not approve the sale of all or
20 substantially all the assets of a debtor with 50 or more
21 employees until the debtor has reported to the court on
22 the potential adverse impact that such sale is likely to have
23 on employee benefits, including any pension and health
24 care plans sponsored by the debtor.”.



1 **SEC. 415. ADMINISTRATIVE EXPENSES.**

2 Section 503 of title 11, United States Code, is
3 amended by adding at the end the following:

4 “(c)(1) Notwithstanding subsection (b), there shall
5 neither be allowed, nor paid—

6 “(A) a transfer made to, or an obligation in-
7 curred for the benefit of, an insider of the debtor for
8 the purpose of inducing such person to remain with
9 the debtor’s business, absent a finding by the court
10 based on evidence in the record that—

11 “(i) the transfer or obligation is essential
12 to retention of the person because the individual
13 has a bona fide job offer from another business
14 at the same or greater rate of compensation;

15 “(ii) the services provided by the person
16 are essential to the survival of the business; and

17 “(iii) either—

18 “(I) the amount of the transfer made
19 to, or obligation incurred for the benefit of,
20 the person is not greater than an amount
21 equal to 10 times the amount of the mean
22 transfer or obligation of a similar kind
23 given to nonmanagement employees for
24 any purpose during the calendar year in
25 which the transfer is made or the obliga-
26 tion is incurred; or



1 “(II) if no such similar transfers were
2 made to, or obligations were incurred for
3 the benefit of, such nonmanagement em-
4 ployees during such calendar year, the
5 amount of the transfer or obligation is not
6 greater than an amount equal to 25 per-
7 cent of the amount of any similar transfer
8 or obligation made to or incurred for the
9 benefit of such insider for any purpose
10 during the calendar year before the year in
11 which such transfer is made or obligation
12 is incurred;

13 “(B) a severance payment to an insider of the
14 debtor, unless—

15 “(i) the payment is part of a program that
16 is generally applicable to all full-time employees;
17 and

18 “(ii) the amount of the payment is not
19 greater than 10 times the amount of the mean
20 severance pay given to nonmanagement employ-
21 ees during the calendar year in which the pay-
22 ment is made; or

23 “(C) other transfers or obligations that are out-
24 side the ordinary course of business and not justified
25 by the facts and circumstances of the case.



1 “(2) For purposes of paragraph (1)(C), transfers
2 made to, or obligations incurred for the benefit of, officers,
3 managers, or consultants hired after the date of the filing
4 of the petition shall be considered outside the ordinary
5 course of business.”.

6 **SEC. 416. PRIORITIES**

7 Section 507(a) of title 11, United States Code, is
8 amended—

9 (1) in paragraph (3), by striking “\$4,000” and
10 inserting “\$13,500”;

11 (2) in paragraph (3), striking “90 days” and
12 inserting “180 days”;

13 (3) in paragraph (4)(A), striking “180 days”
14 and inserting “360 days”; and

15 (4) in paragraph (4)(B)(i), by striking
16 “\$4,000” and inserting “\$13,500”.

17 **SEC. 417. LOCAL FILING OF BANKRUPTCY CASES.**

18 (a) VENUE OF CASES UNDER TITLE 11.—Section
19 1408 of title 28, United States Code, is amended—

20 (1) by striking “Except” and inserting the fol-
21 lowing:

22 “(a) Except”;

23 (2) in paragraph (2), by inserting “as defined
24 in section 101(2)(A) of title 11” after “affiliate”;
25 and



1 (3) by adding at the end the following:

2 “(b) For purposes of subsection (a)—

3 “(1) if the debtor is a corporation, the domicile
4 and residence of the debtor are conclusively pre-
5 sumed to be where the debtor’s principal place of
6 business in the United States is located; and

7 “(2) if an affiliate, as defined in section
8 101(2)(A) of title 11, is not a debtor in a case under
9 title 11, but the debtor is an affiliate as defined in
10 subparagraph (B), (C), or (D) of that section, then
11 the bankruptcy case may be filed in the district in
12 which the principal place of business of the affiliate
13 with the greatest assets in the United States is lo-
14 cated.”.

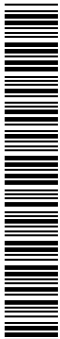
15 (b) CHANGE OF VENUE.—Section 1412 of title 28,
16 United States Code, is amended—

17 (1) by striking “A” and inserting the following:

18 “(a) A”; and

19 (2) by adding at the end the following:

20 “(b) The district court of a district in which is filed
21 a case laying venue in the wrong division or district shall
22 dismiss, or if it be in the interest of justice, transfer such
23 case to any district or division in which it could have been
24 brought.



1 “(c) Nothing in this chapter shall impair the jurisdic-
2 tion of a district court of any matter involving a party
3 who does not interpose timely and sufficient objection to
4 the venue.

5 “(d) As used in this section—

6 “(1) the term “district court” includes—

7 “(A) the bankruptcy judges of each such
8 court as defined in section 151 of this title; and

9 “(B) the District Court of Guam, the Dis-
10 trict Court for the Northern Mariana Islands,
11 and the District Court of the Virgin Islands, in-
12 cluding any bankruptcy judge of each such
13 court; and

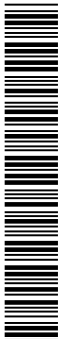
14 “(2) the term “district” includes the territorial
15 jurisdiction of each such court.”.

16 **SEC. 418. ASSUMPTION AND TERMINATION OF CERTAIN**
17 **CONTRACTS AND LEASES**

18 (a) ASSUMPTION.—Section 365(c) of title 11, United
19 States Code, is amended—

20 (1) by inserting “(1) after “(c)”;

21 (2) by redesignating existing paragraphs (1)
22 through (4) as subparagraphs (A) through (D) re-
23 spectively;



1 (3) by redesignating subparagraphs (A) and
2 (B) of paragraph (1) as clauses (i) and (ii), respec-
3 tively; and

4 (4) by adding at the end the following:

5 “(2) A debtor in possession may assume, but may not
6 assign, an executory contract or unexpired lease in the cir-
7 cumstances described in paragraph (1)(A).”.

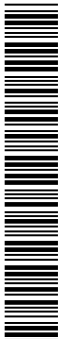
8 (b) TERMINATION.—Clause (i) of section
9 365(e)(2)(A) of title 11, United States Code, is amended
10 by inserting “the trustee seeks to assign such contract or
11 lease and” before “applicable law”.

12 **Subtitle B—Small Business**
13 **Bankruptcy Provisions**

14 **SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**
15 **AND PLAN.**

16 Section 1125 of title 11, United States Code, is
17 amended—

18 (1) in subsection (a)(1), by inserting before the
19 semicolon “and in determining whether a disclosure
20 statement provides adequate information, the court
21 shall consider the complexity of the case, the benefit
22 of additional information to creditors and other par-
23 ties in interest, and the cost of providing additional
24 information”; and



1 (2) by striking subsection (f), and inserting the
2 following:

3 “(f) Notwithstanding subsection (b), in a small busi-
4 ness case—

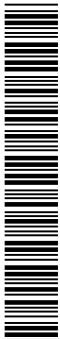
5 “(1) the court may determine that the plan
6 itself provides adequate information and that a sepa-
7 rate disclosure statement is not necessary;

8 “(2) the court may approve a disclosure state-
9 ment submitted on standard forms approved by the
10 court or adopted under section 2075 of title 28; and

11 “(3)(A) the court may conditionally approve a
12 disclosure statement subject to final approval after
13 notice and a hearing;

14 “(B) acceptances and rejections of a plan may
15 be solicited based on a conditionally approved disclo-
16 sure statement if the debtor provides adequate infor-
17 mation to each holder of a claim or interest that is
18 solicited, but a conditionally approved disclosure
19 statement shall be mailed not later than 25 days be-
20 fore the date of the hearing on confirmation of the
21 plan; and

22 “(C) the hearing on the disclosure statement
23 may be combined with the hearing on confirmation
24 of a plan.”.



1 **SEC. 432. DEFINITIONS.**

2 (a) DEFINITIONS.—Section 101 of title 11, United
3 States Code, is amended by striking paragraph (51C) and
4 inserting the following:

5 “(51C) ‘small business case’ means a case filed
6 under chapter 11 of this title in which the debtor is
7 a small business debtor;

8 “(51D) ‘small business debtor’—

9 “(A) subject to subparagraph (B), means a
10 person engaged in commercial or business ac-
11 tivities (including any affiliate of such person
12 that is also a debtor under this title and exclud-
13 ing a person whose primary activity is the busi-
14 ness of owning or operating real property or ac-
15 tivities incidental thereto) that has aggregate
16 noncontingent liquidated secured and unsecured
17 debts as of the date of the petition or the date
18 of the order for relief in an amount not more
19 than \$2,000,000 (excluding debts owed to 1 or
20 more affiliates or insiders) for a case in which
21 the United States trustee has not appointed
22 under section 1102(a)(1) a committee of unse-
23 cured creditors or where the court has deter-
24 mined that the committee of unsecured credi-
25 tors is not sufficiently active and representative
26 to provide effective oversight of the debtor; and



1 “(B) does not include any member of a
2 group of affiliated debtors that has aggregate
3 noncontingent liquidated secured and unsecured
4 debts in an amount greater than \$2,000,000
5 (excluding debt owed to 1 or more affiliates or
6 insiders);”.

7 (b) CONFORMING AMENDMENT.—Section 1102(a)(3)
8 of title 11, United States Code, is amended by inserting
9 “debtor” after “small business”.

10 (c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section
11 104(b) of title 11, United States Code, as amended by
12 section 226, is amended by inserting “101(51D),” after
13 “101(3),” each place it appears.

14 **SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND**
15 **PLAN.**

16 Within a reasonable period of time after the date of
17 enactment of this Act, the Judicial Conference of the
18 United States shall prescribe in accordance with rule 9009
19 of the Federal Rules of Bankruptcy Procedure official
20 standard form disclosure statements and plans of reorga-
21 nization for small business debtors (as defined in section
22 101 of title 11, United States Code, as amended by this
23 Act), designed to achieve a practical balance between—



1 (1) the reasonable needs of the courts, the
2 United States trustee, creditors, and other parties in
3 interest for reasonably complete information; and

4 (2) economy and simplicity for debtors.

5 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIRE-**
6 **MENTS.**

7 (a) REPORTING REQUIRED.—

8 (1) IN GENERAL.—Chapter 3 of title 11, United
9 States Code, is amended by inserting after section
10 307 the following:

11 **“§ 308. Debtor reporting requirements**

12 “(a) For purposes of this section, the term ‘profit-
13 ability’ means, with respect to a debtor, the amount of
14 money that the debtor has earned or lost during current
15 and recent fiscal periods.

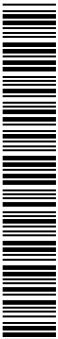
16 “(b) A small business debtor shall file periodic finan-
17 cial and other reports containing information including—

18 “(1) the debtor’s profitability;

19 “(2) reasonable approximations of the debtor’s
20 projected cash receipts and cash disbursements over
21 a reasonable period;

22 “(3) comparisons of actual cash receipts and
23 disbursements with projections in prior reports;

24 “(4)(A) whether the debtor is—



1 “(i) in compliance in all material respects
2 with postpetition requirements imposed by this
3 title and the Federal Rules of Bankruptcy Pro-
4 cedure; and

5 “(ii) timely filing tax returns and other re-
6 quired government filings and paying taxes and
7 other administrative expenses when due;

8 “(B) if the debtor is not in compliance with the
9 requirements referred to in subparagraph (A)(i) or
10 filing tax returns and other required government fil-
11 ings and making the payments referred to in sub-
12 paragraph (A)(ii), what the failures are and how, at
13 what cost, and when the debtor intends to remedy
14 such failures; and

15 “(C) such other matters as are in the best in-
16 terests of the debtor and creditors, and in the public
17 interest in fair and efficient procedures under chap-
18 ter 11 of this title.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for chapter 3 of title 11, United States Code,
21 is amended by inserting after the item relating to
22 section 307 the following:

“308. Debtor reporting requirements.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) shall take effect 60 days after the date on
25 which rules are prescribed under section 2075 of title 28,



1 United States Code, to establish forms to be used to com-
2 ply with section 308 of title 11, United States Code, as
3 added by subsection (a).

4 **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR**
5 **SMALL BUSINESS CASES.**

6 (a) PROPOSAL OF RULES AND FORMS.—The Judicial
7 Conference of the United States shall propose in accord-
8 ance with section 2073 of title 28 of the United States
9 Code amended Federal Rules of Bankruptcy Procedure,
10 and shall prescribe in accordance with rule 9009 of the
11 Federal Rules of Bankruptcy Procedure official bank-
12 ruptcy forms, directing small business debtors to file peri-
13 odic financial and other reports containing information,
14 including information relating to—

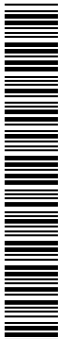
15 (1) the debtor's profitability;

16 (2) the debtor's cash receipts and disburse-
17 ments; and

18 (3) whether the debtor is timely filing tax re-
19 turns and paying taxes and other administrative ex-
20 penses when due.

21 (b) PURPOSE.—The rules and forms proposed under
22 subsection (a) shall be designed to achieve a practical bal-
23 ance among—

24 (1) the reasonable needs of the bankruptcy
25 court, the United States trustee, creditors, and other



1 parties in interest for reasonably complete informa-
2 tion;

3 (2) a small business debtor's interest that re-
4 quired reports be easy and inexpensive to complete;
5 and

6 (3) the interest of all parties that the required
7 reports help such debtor to understand such debtor's
8 financial condition and plan the such debtor's fu-
9 ture.

10 **SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

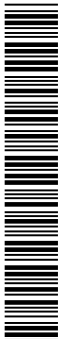
11 (a) DUTIES IN CHAPTER 11 CASES.—Subchapter I
12 of chapter 11 of title 11, United States Code, as amended
13 by section 321, is amended by adding at the end the fol-
14 lowing:

15 **“§ 1116. Duties of trustee or debtor in possession in**
16 **small business cases**

17 “In a small business case, a trustee or the debtor in
18 possession, in addition to the duties provided in this title
19 and as otherwise required by law, shall—

20 “(1) append to the voluntary petition or, in an
21 involuntary case, file not later than 7 days after the
22 date of the order for relief—

23 “(A) its most recent balance sheet, state-
24 ment of operations, cash-flow statement, Fed-
25 eral income tax return; or



1 “(B) a statement made under penalty of
2 perjury that no balance sheet, statement of op-
3 erations, or cash-flow statement has been pre-
4 pared and no Federal tax return has been filed;

5 “(2) attend, through its senior management
6 personnel and counsel, meetings scheduled by the
7 court or the United States trustee, including initial
8 debtor interviews, scheduling conferences, and meet-
9 ings of creditors convened under section 341 unless
10 the court, after notice and a hearing, waives that re-
11 quirement upon a finding of extraordinary and com-
12 pelling circumstances;

13 “(3) timely file all schedules and statements of
14 financial affairs, unless the court, after notice and a
15 hearing, grants an extension, which shall not extend
16 such time period to a date later than 30 days after
17 the date of the order for relief, absent extraordinary
18 and compelling circumstances;

19 “(4) file all postpetition financial and other re-
20 ports required by the Federal Rules of Bankruptcy
21 Procedure or by local rule of the district court;

22 “(5) subject to section 363(c)(2), maintain in-
23 surance customary and appropriate to the industry;

24 “(6)(A) timely file tax returns and other re-
25 quired government filings; and



1 “(B) subject to section 363(c)(2), timely pay all
2 taxes entitled to administrative expense priority ex-
3 cept those being contested by appropriate pro-
4 ceedings being diligently prosecuted; and

5 “(7) allow the United States trustee, or a des-
6 ignated representative of the United States trustee,
7 to inspect the debtor’s business premises, books, and
8 records at reasonable times, after reasonable prior
9 written notice, unless notice is waived by the debtor.

10 “(b) The court may extend the time periods specified
11 in paragraphs (1) and (3) of subsection (a) if the debtor
12 establishes by clear and convincing evidence that an exten-
13 sion is justified by circumstances that there are beyond
14 the debtor’s control that were not foreseeable on the date
15 of the order of relief.”.

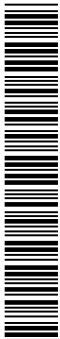
16 (b) CLERICAL AMENDMENT.—The table of sections
17 for chapter 11 of title 11, United States Code, as amended
18 by section 321, is amended by inserting after the item re-
19 lating to section 1115 the following:

“1116. Duties of trustee or debtor in possession in small business cases.”.

20 **SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

21 Section 1121 of title 11, United States Code, is
22 amended by striking subsection (e) and inserting the fol-
23 lowing:

24 “(e) In a small business case—



1 “(1) only the debtor may file a plan until after
2 180 days after the date of the order for relief, unless
3 that period is—

4 “(A) extended as provided by this sub-
5 section, after notice and a hearing; or

6 “(B) the court, for cause, orders otherwise;

7 “(2) the plan and a disclosure statement (if
8 any) shall be filed not later than 300 days after the
9 date of the order for relief; and

10 “(3) the time periods specified in paragraphs
11 (1) and (2), and the time fixed in section 1129(e)
12 within which the plan shall be confirmed, may be ex-
13 tended only if—

14 “(A) the debtor, after providing notice to
15 parties in interest (including the United States
16 trustee), demonstrates by a preponderance of
17 the evidence that it is more likely than not that
18 the court will confirm a plan within a reason-
19 able period of time;

20 “(B) a new deadline is imposed at the time
21 the extension is granted;

22 “(C) the debtor establishes by clear and
23 convincing evidence that an extension is justi-
24 fied by circumstances beyond the debtor’s con-



1 trol that were not foreseeable on the date of the
2 order of relief; and

3 “(D) the order extending time is signed be-
4 fore the existing deadline has expired.”..

5 **SEC. 438. PLAN CONFIRMATION DEADLINE.**

6 Section 1129 of title 11, United States Code, is
7 amended by adding at the end the following:

8 “(e) In a small business case, the court shall confirm
9 a plan that complies with the applicable provisions of this
10 title and that is filed in accordance with section 1121(e)
11 not later than 45 days after the plan is filed unless the
12 time for confirmation is extended in accordance with sec-
13 tion 1121(e)(3) or the debtor establishes by clear and con-
14 vincing evidence that an extension is justified by cir-
15 cumstances beyond the debtor’s control that were not fore-
16 seeable on the date of the order for relief.”.

17 **SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

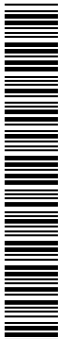
18 Section 586(a) of title 28, United States Code, is
19 amended—

20 (1) in paragraph (3)—

21 (A) in subparagraph (G), by striking

22 “and” at the end;

23 (B) by redesignating subparagraph (H) as
24 subparagraph (I); and



1 (C) by inserting after subparagraph (G)
2 the following:

3 “(H) in small business cases (as defined in
4 section 101 of title 11), performing the addi-
5 tional duties specified in title 11 pertaining to
6 such cases; and”;

7 (2) in paragraph (5), by striking “and” at the
8 end;

9 (3) in paragraph (6), by striking the period at
10 the end and inserting a semicolon; and

11 (4) by adding at the end the following:

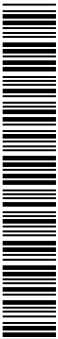
12 “(7) in each of such small business cases—

13 “(A) conduct an initial debtor interview as
14 soon as practicable after the date of the order
15 for relief but before the first meeting scheduled
16 under section 341(a) of title 11, at which time
17 the United States trustee shall—

18 “(i) begin to investigate the debtor’s
19 viability;

20 “(ii) inquire about the debtor’s busi-
21 ness plan;

22 “(iii) explain the debtor’s obligations
23 to file monthly operating reports and other
24 required reports;



1 “(iv) attempt to develop an agreed
2 scheduling order; and

3 “(v) inform the debtor of other obliga-
4 tions;

5 “(B) if determined to be appropriate and
6 advisable, visit the appropriate business prem-
7 ises of the debtor, ascertain the state of the
8 debtor’s books and records, and verify that the
9 debtor has filed its tax returns; and

10 “(C) review and monitor diligently the
11 debtor’s activities, to identify as promptly as
12 possible whether the debtor will be unable to
13 confirm a plan; and

14 “(8) in any case in which the United States
15 trustee finds material grounds for any relief under
16 section 1112 of title 11, the United States trustee
17 shall apply promptly after making that finding to
18 the court for relief.”.

19 **SEC. 440. SCHEDULING CONFERENCES.**

20 Section 105(d) of title 11, United States Code, is
21 amended—

22 (1) in the matter preceding paragraph (1), by
23 striking “, may”; and

24 (2) by striking paragraph (1) and inserting the
25 following:



1 “(1) shall hold such status conferences as are
2 necessary to further the expeditious and economical
3 resolution of the case; and”.

4 **SEC. 441. SERIAL FILER PROVISIONS.**

5 Section 362 of title 11, United States Code, as
6 amended by sections 106, 305, and 311, is amended—

7 (1) in subsection (k), as so redesignated by sec-
8 tion 305—

9 (A) by striking “An” and inserting “(1)
10 Except as provided in paragraph (2), an”; and

11 (B) by adding at the end the following:

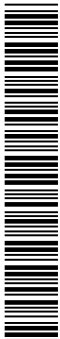
12 “(2) If such violation is based on an action taken by
13 an entity in the good faith belief that subsection (h) ap-
14 plies to the debtor, the recovery under paragraph (1) of
15 this subsection against such entity shall be limited to ac-
16 tual damages.”; and

17 (2) by adding at the end the following:

18 “(n)(1) Except as provided in paragraph (2), sub-
19 section (a) does not apply in a case in which the debtor—

20 “(A) is a debtor in a small business case pend-
21 ing at the time the petition is filed;

22 “(B) was a debtor in a small business case that
23 was dismissed for any reason by an order that be-
24 came final in the 2-year period ending on the date



1 of the order for relief entered with respect to the pe-
2 tition;

3 “(C) was a debtor in a small business case in
4 which a plan was confirmed in the 2-year period
5 ending on the date of the order for relief entered
6 with respect to the petition; or

7 “(D) is an entity that has acquired substan-
8 tially all of the assets or business of a small business
9 debtor described in subparagraph (A), (B), or (C),
10 unless such entity establishes by a preponderance of
11 the evidence that such entity acquired substantially
12 all of the assets or business of such small business
13 debtor in good faith and not for the purpose of evad-
14 ing this paragraph.

15 “(2) Paragraph (1) does not apply—

16 “(A) to an involuntary case involving no collu-
17 sion by the debtor with creditors; or

18 “(B) to the filing of a petition if—

19 “(i) the debtor proves by a preponderance
20 of the evidence that the filing of the petition re-
21 sulted from circumstances beyond the control of
22 the debtor not foreseeable at the time the case
23 then pending was filed; and

24 “(ii) it is more likely than not that the
25 court will confirm a feasible plan, but not a liq-



1 updating plan, within a reasonable period of
2 time.”.

3 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**
4 **VERSION AND APPOINTMENT OF A TRUSTEE.**

5 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-
6 VERSION.—Section 1112 of title 11, United States Code,
7 is amended by striking subsection (b) and inserting the
8 following:

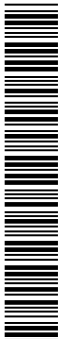
9 “(b)(1) Except as provided in paragraph (2) of this
10 subsection, subsection (c) of this section, and section
11 1104(a)(3), on request of a party in interest, and after
12 notice and a hearing, the court shall convert a case under
13 this chapter to a case under chapter 7 or dismiss a case
14 under this chapter, whichever is in the best interests of
15 the creditors and the estate, if the movement establishes
16 cause.

17 “(2) The relief provided in paragraph (1) shall not
18 be granted if—

19 “(A) the granting of such relief is not in the
20 best interests of the creditors or the estate; or

21 “(B) the debtor, or another party in interest,
22 objects and establishes that—

23 “(i) there is reasonable likelihood that a plan
24 will be confirmed within the time frames established
25 in section 1121(e) and 1129(e) of this title, or if



1 such sections do not apply, within such a reasonable
2 period of time; and

3 “(ii) the grounds for granting such relief in-
4 clude an act or omission of the debtor other than
5 under paragraph (4)(A)—

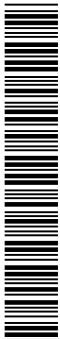
6 “(I) for which there exists a reasonable
7 justification for the act or omissions;

8 “(II) the debtor establishes by clear and
9 convincing evidence that an extension is justi-
10 fied by circumstances beyond the debtor’s con-
11 trol that were not foreseeable on the date of the
12 order for relief; and

13 “(III) that will be cured within a reason-
14 able period of time fixed by the court.

15 “(3) The court shall commence the hearing on a mo-
16 tion under this subsection not later than 30 days after
17 filing of the motion, and shall decide the motion not later
18 than 15 days after commencement of such hearing, unless
19 the movant expressly consents to a continuance for a spe-
20 cific period of time or compelling circumstances prevent
21 the court from meeting the time limits established by this
22 paragraph.

23 “(4) For purposes of this subsection, the term ‘cause’
24 includes—



1 “(A) substantial or continuing loss to or dimi-
2 nution of the estate and the absence of a reasonable
3 likelihood of rehabilitation;

4 “(B) gross mismanagement of the estate;

5 “(C) failure to maintain appropriate insurance
6 that poses a risk to the estate or to the public;

7 “(D) unauthorized use of cash collateral sub-
8 stantially harmful to 1 or more creditors;

9 “(E) failure to comply with an order of the
10 court;

11 “(F) unexcused failure to satisfy timely any fil-
12 ing or reporting requirement established by this title
13 or by any rule applicable to a case under this chap-
14 ter;

15 “(G) failure to attend the meeting of creditors
16 convened under section 341(a) or an examination or-
17 dered under rule 2004 of the Federal Rules of
18 Bankruptcy Procedure without good cause shown by
19 the debtor;

20 “(H) failure timely to provide information or
21 attend meetings reasonably requested by the United
22 States trustee (or the bankruptcy administrator, if
23 any);



1 “(I) failure timely to pay taxes owed after the
2 date of the order for relief or to file tax returns due
3 after the date of the order for relief;

4 “(J) failure to file a disclosure statement, or to
5 file or confirm a plan, within the time fixed by this
6 title or by order of the court;

7 “(K) failure to pay any fees or charges required
8 under chapter 123 of title 28;

9 “(L) revocation of an order of confirmation
10 under section 1144;

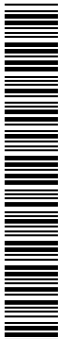
11 “(M) inability to effectuate substantial con-
12 summation of a confirmed plan;

13 “(N) material default by the debtor with re-
14 spect to a confirmed plan;

15 “(O) termination of a confirmed plan by reason
16 of the occurrence of a condition specified in the plan;
17 and

18 “(P) failure of the debtor to pay any domestic
19 support obligation that first becomes payable after
20 the date of the filing of the petition.

21 “(5) The court shall commence the hearing on a mo-
22 tion under this subsection not later than 30 days after
23 filing of the motion, and shall decide the motion not later
24 than 15 days after commencement of such hearing, unless
25 the movant expressly consents to a continuance for a spe-



1 cific period of time or compelling circumstances prevent
2 the court from meeting the time limits established by this
3 paragraph.”.

4 (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF
5 TRUSTEE.—Section 1104(a) of title 11, United States
6 Code, is amended—

7 (1) in paragraph (1), by striking “or” at the
8 end;

9 (2) in paragraph (2), by striking the period at
10 the end and inserting “; or”; and

11 (3) by adding at the end the following:

12 “(3) if grounds exist to convert or dismiss the
13 case under section 1112, but the court determines
14 that the appointment of a trustee or an examiner is
15 in the best interests of creditors and the estate.”.

16 **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**
17 **STATES CODE, WITH RESPECT TO SMALL**
18 **BUSINESSES.**

19 Not later than 2 years after the date of enactment
20 of this Act, the Administrator of the Small Business Ad-
21 ministration, in consultation with the Attorney General,
22 the Director of the Executive Office for United States
23 Trustees, and the Director of the Administrative Office
24 of the United States Courts, shall—

25 (1) conduct a study to determine—



1 (A) the internal and external factors that
2 cause small businesses, especially sole propri-
3 etorships, to become debtors in cases under title
4 11, United States Code, and that cause certain
5 small businesses to successfully complete cases
6 under chapter 11 of such title; and

7 (B) how Federal laws relating to bank-
8 ruptcy may be made more effective and efficient
9 in assisting small businesses to remain viable;
10 and

11 (2) submit to the President pro tempore of the
12 Senate and the Speaker of the House of Representa-
13 tives a report summarizing that study.

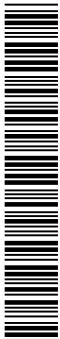
14 **SEC. 444. DUTIES WITH RESPECT TO A DEBTOR WHO IS A**
15 **PLAN ADMINISTRATOR OF AN EMPLOYEE**
16 **BENEFIT PLAN.**

17 (a) IN GENERAL.—Section 521(a) of title 11, United
18 States Code, as amended by sections 106 and 304, is
19 amended—

20 (1) in paragraph (5), by striking “and” at the
21 end;

22 (2) in paragraph (6), by striking the period at
23 the end and inserting “; and”; and

24 (3) by adding after paragraph (6) the following:



1 “(7) unless a trustee is serving in the case, con-
2 tinue to perform the obligations required of the ad-
3 ministrator (as defined in section 3 of the Employee
4 Retirement Income Security Act of 1974) of an em-
5 ployee benefit plan if at the time of the commence-
6 ment of the case the debtor (or any entity des-
7 ignated by the debtor) served as such adminis-
8 trator.”.

9 (b) DUTIES OF TRUSTEES.—Section 704(a) of title
10 11, United States Code, as amended by sections 102 and
11 219, is amended—

12 (1) in paragraph (10), by striking “and” at the
13 end; and

14 (2) by adding at the end the following:

15 “(11) if, at the time of the commencement of
16 the case, the debtor (or any entity designated by the
17 debtor) served as the administrator (as defined in
18 section 3 of the Employee Retirement Income Secu-
19 rity Act of 1974) of an employee benefit plan, con-
20 tinue to perform the obligations required of the ad-
21 ministrator; and”.

22 (c) CONFORMING AMENDMENT.—Section 1106(a)(1)
23 of title 11, United States Code, is amended to read as
24 follows:



1 “(1) perform the duties of the trustee, as speci-
2 fied in paragraphs (2), (5), (7), (8), (9), (10), and
3 (11) of section 704;”.

4 **SEC. 445. APPOINTMENT OF COMMITTEE OF RETIRED EM-**
5 **PLOYEES.**

6 Section 1114(d) of title 11, United States Code, is
7 amended—

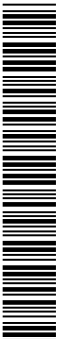
8 (1) by striking “appoint” and inserting “order
9 the appointment of”, and

10 (2) by adding at the end the following: “The
11 United States trustee shall appoint any such com-
12 mittee.”.

13 **SEC. 446. EFFECT OF SALE OF ASSETS ON EMPLOYEE BENE-**
14 **FITS.**

15 Section 363(b) of title 11, United States Code, is
16 amended by adding at the end the following:

17 “(3) The court shall not approve the sale of all or
18 substantially all the assets of a debtor with 50 or more
19 employees until the debtor has reported to the court on
20 the potential adverse impact that such sale is likely to have
21 on employee benefits, including any pension and health
22 care plans sponsored by the debtor.”.



1 **TITLE V—MUNICIPAL**
2 **BANKRUPTCY PROVISIONS**

3 **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**
4 **TION.**

5 (a) TECHNICAL AMENDMENT RELATING TO MUNICI-
6 PALITIES.—Section 921(d) of title 11, United States
7 Code, is amended by inserting “notwithstanding section
8 301(b)” before the period at the end.

9 (b) CONFORMING AMENDMENT.—Section 301 of title
10 11, United States Code, is amended—

11 (1) by inserting “(a)” before “A voluntary”;
12 and

13 (2) by striking the last sentence and inserting
14 the following:

15 “(b) The commencement of a voluntary case under
16 a chapter of this title constitutes an order for relief under
17 such chapter.”.

18 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO**
19 **CHAPTER 9.**

20 Section 901(a) of title 11, United States Code, is
21 amended—

22 (1) by inserting “555, 556,” after “553,”; and

23 (2) by inserting “559, 560, 561, 562,” after
24 “557,”.



1 **TITLE VI—BANKRUPTCY DATA**

2 **SEC. 601. IMPROVED BANKRUPTCY STATISTICS.**

3 (a) IN GENERAL.—Chapter 6 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 159. Bankruptcy statistics**

7 “(a) The clerk of the district court, or the clerk of
8 the bankruptcy court if one is certified pursuant to section
9 156(b) of this title, shall collect statistics regarding debt-
10 ors who are individuals with primarily consumer debts
11 seeking relief under chapters 7, 11, and 13 of title 11.
12 Those statistics shall be in a standardized format pre-
13 scribed by the Director of the Administrative Office of the
14 United States Courts (referred to in this section as the
15 ‘Director’).

16 “(b) The Director shall—

17 “(1) compile the statistics referred to in sub-
18 section (a);

19 “(2) make the statistics available to the public;
20 and

21 “(3) not later than July 1, 2006, and annually
22 thereafter, prepare, and submit to Congress a report
23 concerning the information collected under sub-
24 section (a) that contains an analysis of the informa-
25 tion.



1 “(c) The compilation required under subsection (b)
2 shall—

3 “(1) be itemized, by chapter, with respect to
4 title 11;

5 “(2) be presented in the aggregate and for each
6 district; and

7 “(3) include information concerning—

8 “(A) the total assets and total liabilities of
9 the debtors described in subsection (a), and in
10 each category of assets and liabilities, as re-
11 ported in the schedules prescribed pursuant to
12 section 2075 of this title and filed by debtors;

13 “(B) the current monthly income, average
14 income, and average expenses of debtors as re-
15 ported on the schedules and statements that
16 each such debtor files under sections 521 and
17 1322 of title 11;

18 “(C) the aggregate amount of debt dis-
19 charged in cases filed during the reporting pe-
20 riod, determined as the difference between the
21 total amount of debt and obligations of a debtor
22 reported on the schedules and the amount of
23 such debt reported in categories which are pre-
24 dominantly nondischargeable;



1 “(D) the average period of time between
2 the date of the filing of the petition and the
3 closing of the case for cases closed during the
4 reporting period;

5 “(E) for cases closed during the reporting
6 period—

7 “(i) the number of cases in which a
8 reaffirmation agreement was filed; and

9 “(ii)(I) the total number of reaffirma-
10 tion agreements filed;

11 “(II) of those cases in which a reaffir-
12 mation agreement was filed, the number of
13 cases in which the debtor was not rep-
14 resented by an attorney; and

15 “(III) of those cases in which a reaf-
16 firmation agreement was filed, the number
17 of cases in which the reaffirmation agree-
18 ment was approved by the court;

19 “(F) with respect to cases filed under
20 chapter 13 of title 11, for the reporting
21 period—

22 “(i)(I) the number of cases in which a
23 final order was entered determining the
24 value of property securing a claim in an



1 amount less than the amount of the claim;
2 and

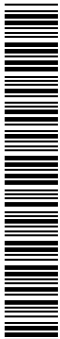
3 “(II) the number of final orders en-
4 tered determining the value of property se-
5 curing a claim;

6 “(ii) the number of cases dismissed,
7 the number of cases dismissed for failure
8 to make payments under the plan, the
9 number of cases refiled after dismissal,
10 and the number of cases in which the plan
11 was completed, separately itemized with re-
12 spect to the number of modifications made
13 before completion of the plan, if any; and

14 “(iii) the number of cases in which
15 the debtor filed another case during the 6-
16 year period preceding the filing;

17 “(G) the number of cases in which credi-
18 tors were fined for misconduct and any amount
19 of punitive damages awarded by the court for
20 creditor misconduct; and

21 “(H) the number of cases in which sanc-
22 tions under rule 9011 of the Federal Rules of
23 Bankruptcy Procedure were imposed against
24 debtor’s attorney or damages awarded under
25 such Rule.”.



1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 6 of title 28, United States Code, is amended
3 by adding at the end the following:

“159. Bankruptcy statistics.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect 18 months after the date of
6 enactment of this Act.

7 **SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANK-**
8 **RUPTCY DATA.**

9 (a) AMENDMENT.—Chapter 39 of title 28, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

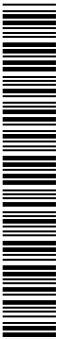
12 **“§ 589b. Bankruptcy data**

13 “(a) RULES.—The Attorney General shall, within a
14 reasonable time after the effective date of this section,
15 issue rules requiring uniform forms for (and from time
16 to time thereafter to appropriately modify and approve)—

17 “(1) final reports by trustees in cases under
18 chapters 7, 12, and 13 of title 11; and

19 “(2) periodic reports by debtors in possession or
20 trustees in cases under chapter 11 of title 11.

21 “(b) REPORTS.—Each report referred to in sub-
22 section (a) shall be designed (and the requirements as to
23 place and manner of filing shall be established) so as to
24 facilitate compilation of data and maximum possible ac-
25 cess of the public, both by physical inspection at one or



1 more central filing locations, and by electronic access
2 through the Internet or other appropriate media.

3 “(c) REQUIRED INFORMATION.—The information re-
4 quired to be filed in the reports referred to in subsection
5 (b) shall be that which is in the best interests of debtors
6 and creditors, and in the public interest in reasonable and
7 adequate information to evaluate the efficiency and practi-
8 cality of the Federal bankruptcy system. In issuing rules
9 proposing the forms referred to in subsection (a), the At-
10 torney General shall strike the best achievable practical
11 balance between—

12 “(1) the reasonable needs of the public for in-
13 formation about the operational results of the Fed-
14 eral bankruptcy system;

15 “(2) economy, simplicity, and lack of undue
16 burden on persons with a duty to file reports; and

17 “(3) appropriate privacy concerns and safe-
18 guards.

19 “(d) FINAL REPORTS.—The uniform forms for final
20 reports required under subsection (a) for use by trustees
21 under chapters 7, 12, and 13 of title 11 shall, in addition
22 to such other matters as are required by law or as the
23 Attorney General in the discretion of the Attorney General
24 shall propose, include with respect to a case under such
25 title—



1 “(1) information about the length of time the
2 case was pending;

3 “(2) assets abandoned;

4 “(3) assets exempted;

5 “(4) receipts and disbursements of the estate;

6 “(5) expenses of administration, including for
7 use under section 707(b), actual costs of admin-
8 istering cases under chapter 13 of title 11;

9 “(6) claims asserted;

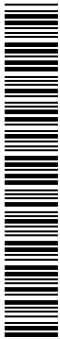
10 “(7) claims allowed; and

11 “(8) distributions to claimants and claims dis-
12 charged without payment,

13 in each case by appropriate category and, in cases under
14 chapters 12 and 13 of title 11, date of confirmation of
15 the plan, each modification thereto, and defaults by the
16 debtor in performance under the plan.

17 “(e) PERIODIC REPORTS.—The uniform forms for
18 periodic reports required under subsection (a) for use by
19 trustees or debtors in possession under chapter 11 of title
20 11 shall, in addition to such other matters as are required
21 by law or as the Attorney General in the discretion of the
22 Attorney General shall propose, include—

23 “(1) information about the industry classifica-
24 tion, published by the Department of Commerce, for
25 the businesses conducted by the debtor;



1 “(2) length of time the case has been pending;

2 “(3) number of full-time employees as of the
3 date of the order for relief and at the end of each
4 reporting period since the case was filed;

5 “(4) cash receipts, cash disbursements and
6 profitability of the debtor for the most recent period
7 and cumulatively since the date of the order for re-
8 lief;

9 “(5) compliance with title 11, whether or not
10 tax returns and tax payments since the date of the
11 order for relief have been timely filed and made;

12 “(6) all professional fees approved by the court
13 in the case for the most recent period and cumula-
14 tively since the date of the order for relief (sepa-
15 rately reported, for the professional fees incurred by
16 or on behalf of the debtor, between those that would
17 have been incurred absent a bankruptcy case and
18 those not); and

19 “(7) plans of reorganization filed and confirmed
20 and, with respect thereto, by class, the recoveries of
21 the holders, expressed in aggregate dollar values
22 and, in the case of claims, as a percentage of total
23 claims of the class allowed.”.



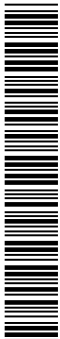
1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 39 of title 28, United States Code, is amended
3 by adding at the end the following:

“589b. Bankruptcy data.”.

4 **SEC. 603. AUDIT PROCEDURES.**

5 (a) IN GENERAL.—

6 (1) ESTABLISHMENT OF PROCEDURES.—The
7 Attorney General (in judicial districts served by
8 United States trustees) and the Judicial Conference
9 of the United States (in judicial districts served by
10 bankruptcy administrators) shall establish proce-
11 dures to determine the accuracy, veracity, and com-
12 pleteness of petitions, schedules, and other informa-
13 tion that the debtor is required to provide under sec-
14 tions 521 and 1322 of title 11, United States Code,
15 and, if applicable, section 111 of such title, in cases
16 filed under chapter 7 or 13 of such title in which the
17 debtor is an individual. Such audits shall be in ac-
18 cordance with generally accepted auditing standards
19 and performed by independent certified public ac-
20 countants or independent licensed public account-
21 ants, provided that the Attorney General and the
22 Judicial Conference, as appropriate, may develop al-
23 ternative auditing standards not later than 2 years
24 after the date of enactment of this Act.



1 (2) PROCEDURES.—Those procedures required
2 by paragraph (1) shall—

3 (A) establish a method of selecting appro-
4 priate qualified persons to contract to perform
5 those audits;

6 (B) establish a method of randomly select-
7 ing cases to be audited, except that not less
8 than 1 out of every 250 cases in each Federal
9 judicial district shall be selected for audit;

10 (C) require audits of schedules of income
11 and expenses that reflect greater than average
12 variances from the statistical norm of the dis-
13 trict in which the schedules were filed if those
14 variances occur by reason of higher income or
15 higher expenses than the statistical norm of the
16 district in which the schedules were filed; and

17 (D) establish procedures for providing, not
18 less frequently than annually, public informa-
19 tion concerning the aggregate results of such
20 audits including the percentage of cases, by dis-
21 trict, in which a material misstatement of in-
22 come or expenditures is reported.

23 (b) AMENDMENTS.—Section 586 of title 28, United
24 States Code, is amended—



1 (1) in subsection (a), by striking paragraph (6)
2 and inserting the following:

3 “(6) make such reports as the Attorney General
4 directs, including the results of audits performed
5 under section 603(a) of the Bankruptcy Abuse Pre-
6 vention and Consumer Protection Act of 2003;”; and

7 (2) by adding at the end the following:

8 “(f)(1) The United States trustee for each district is
9 authorized to contract with auditors to perform audits in
10 cases designated by the United States trustee, in accord-
11 ance with the procedures established under section 603(a)
12 of the Bankruptcy Abuse Prevention and Consumer Pro-
13 tection Act of 2003.

14 “(2)(A) The report of each audit referred to in para-
15 graph (1) shall be filed with the court and transmitted
16 to the United States trustee. Each report shall clearly and
17 conspicuously specify any material misstatement of income
18 or expenditures or of assets identified by the person per-
19 forming the audit. In any case in which a material
20 misstatement of income or expenditures or of assets has
21 been reported, the clerk of the district court (or the clerk
22 of the bankruptcy court if one is certified under section
23 156(b) of this title) shall give notice of the misstatement
24 to the creditors in the case.



1 “(B) If a material misstatement of income or expend-
2 itures or of assets is reported, the United States trustee
3 shall—

4 “(i) report the material misstatement, if appro-
5 priate, to the United States Attorney pursuant to
6 section 3057 of title 18; and

7 “(ii) if advisable, take appropriate action, in-
8 cluding but not limited to commencing an adversary
9 proceeding to revoke the debtor’s discharge pursuant
10 to section 727(d) of title 11.”.

11 (c) AMENDMENTS TO SECTION 521 OF TITLE 11,
12 U.S.C.—Section 521(a) of title 11, United States Code,
13 as so designated by section 106, is amended in each of
14 paragraphs (3) and (4) by inserting “or an auditor serving
15 under section 586(f) of title 28” after “serving in the
16 case”.

17 (d) AMENDMENTS TO SECTION 727 OF TITLE 11,
18 U.S.C.—Section 727(d) of title 11, United States Code,
19 is amended—

20 (1) in paragraph (2), by striking “or” at the
21 end;

22 (2) in paragraph (3), by striking the period at
23 the end and inserting “; or”; and

24 (3) by adding at the end the following:



1 “(4) the debtor has failed to explain
2 satisfactorily—

3 “(A) a material misstatement in an audit
4 referred to in section 586(f) of title 28; or

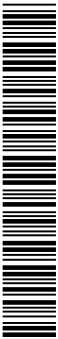
5 “(B) a failure to make available for inspection
6 all necessary accounts, papers, documents,
7 financial records, files, and all other papers,
8 things, or property belonging to the debtor that
9 are requested for an audit referred to in section
10 586(f) of title 28.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

14 SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY
15 OF BANKRUPTCY DATA.

16 It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and



1 (2) there should be established a bankruptcy
2 data system in which—

3 (A) a single set of data definitions and
4 forms are used to collect data nationwide; and

5 (B) data for any particular bankruptcy
6 case are aggregated in the same electronic
7 record.

8 **TITLE VII—ANCILLARY AND**
9 **OTHER CROSS-BORDER CASES**

10 **SEC. 701. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**
11 **UNITED STATES CODE.**

12 (a) IN GENERAL.—Title 11, United States Code, is
13 amended by inserting after chapter 13 the following:

14 **“CHAPTER 15—ANCILLARY AND OTHER**
15 **CROSS-BORDER CASES**

“Sec.

“1501. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“1502. Definitions.

“1503. International obligations of the United States.

“1504. Commencement of ancillary case.

“1505. Authorization to act in a foreign country.

“1506. Public policy exception.

“1507. Additional assistance.

“1508. Interpretation.

“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND
CREDITORS TO THE COURT

“1509. Right of direct access.

“1510. Limited jurisdiction.

“1511. Commencement of case under section 301 or 303.

“1512. Participation of a foreign representative in a case under this title.

“1513. Access of foreign creditors to a case under this title.

“1514. Notification to foreign creditors concerning a case under this title.



“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING
AND RELIEF

- “1515. Application for recognition.
- “1516. Presumptions concerning recognition.
- “1517. Order granting recognition.
- “1518. Subsequent information.
- “1519. Relief that may be granted upon filing petition for recognition.
- “1520. Effects of recognition of a foreign main proceeding.
- “1521. Relief that may be granted upon recognition.
- “1522. Protection of creditors and other interested persons.
- “1523. Actions to avoid acts detrimental to creditors.
- “1524. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND
FOREIGN REPRESENTATIVES

- “1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
- “1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
- “1527. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

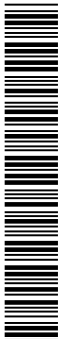
- “1528. Commencement of a case under this title after recognition of a foreign main proceeding.
- “1529. Coordination of a case under this title and a foreign proceeding.
- “1530. Coordination of more than 1 foreign proceeding.
- “1531. Presumption of insolvency based on recognition of a foreign main proceeding.
- “1532. Rule of payment in concurrent proceedings.

1 **“§ 1501. Purpose and scope of application**

2 “(a) The purpose of this chapter is to incorporate the
3 Model Law on Cross-Border Insolvency so as to provide
4 effective mechanisms for dealing with cases of cross-border
5 insolvency with the objectives of—

6 “(1) cooperation between—

7 “(A) courts of the United States, United
8 States trustees, trustees, examiners, debtors,
9 and debtors in possession; and



1 “(B) the courts and other competent au-
2 thorities of foreign countries involved in cross-
3 border insolvency cases;

4 “(2) greater legal certainty for trade and in-
5 vestment;

6 “(3) fair and efficient administration of cross-
7 border insolvencies that protects the interests of all
8 creditors, and other interested entities, including the
9 debtor;

10 “(4) protection and maximization of the value
11 of the debtor’s assets; and

12 “(5) facilitation of the rescue of financially
13 troubled businesses, thereby protecting investment
14 and preserving employment.

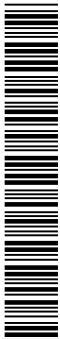
15 “(b) This chapter applies where—

16 “(1) assistance is sought in the United States
17 by a foreign court or a foreign representative in con-
18 nection with a foreign proceeding;

19 “(2) assistance is sought in a foreign country in
20 connection with a case under this title;

21 “(3) a foreign proceeding and a case under this
22 title with respect to the same debtor are pending
23 concurrently; or

24 “(4) creditors or other interested persons in a
25 foreign country have an interest in requesting the



1 commencement of, or participating in, a case or pro-
2 ceeding under this title.

3 “(c) This chapter does not apply to—

4 “(1) a proceeding concerning an entity, other
5 than a foreign insurance company, identified by ex-
6 clusion in section 109(b);

7 “(2) an individual, or to an individual and such
8 individual’s spouse, who have debts within the limits
9 specified in section 109(e) and who are citizens of
10 the United States or aliens lawfully admitted for
11 permanent residence in the United States; or

12 “(3) an entity subject to a proceeding under the
13 Securities Investor Protection Act of 1970, a stock-
14 broker subject to subchapter III of chapter 7 of this
15 title, or a commodity broker subject to subchapter
16 IV of chapter 7 of this title.

17 “(d) The court may not grant relief under this chap-
18 ter with respect to any deposit, escrow, trust fund, or
19 other security required or permitted under any applicable
20 State insurance law or regulation for the benefit of claim
21 holders in the United States.

22 “SUBCHAPTER I—GENERAL PROVISIONS

23 “§ 1502. Definitions

24 “For the purposes of this chapter, the term—



1 “(1) ‘debtor’ means an entity that is the subject
2 of a foreign proceeding;

3 “(2) ‘establishment’ means any place of oper-
4 ations where the debtor carries out a nontransitory
5 economic activity;

6 “(3) ‘foreign court’ means a judicial or other
7 authority competent to control or supervise a foreign
8 proceeding;

9 “(4) ‘foreign main proceeding’ means a foreign
10 proceeding pending in the country where the debtor
11 has the center of its main interests;

12 “(5) ‘foreign nonmain proceeding’ means a for-
13 eign proceeding, other than a foreign main pro-
14 ceeding, pending in a country where the debtor has
15 an establishment;

16 “(6) ‘trustee’ includes a trustee, a debtor in
17 possession in a case under any chapter of this title,
18 or a debtor under chapter 9 of this title;

19 “(7) ‘recognition’ means the entry of an order
20 granting recognition of a foreign main proceeding or
21 foreign nonmain proceeding under this chapter; and

22 “(8) ‘within the territorial jurisdiction of the
23 United States’, when used with reference to property
24 of a debtor, refers to tangible property located with-
25 in the territory of the United States and intangible



1 property deemed under applicable nonbankruptcy
2 law to be located within that territory, including any
3 property subject to attachment or garnishment that
4 may properly be seized or garnished by an action in
5 a Federal or State court in the United States.

6 **“§ 1503. International obligations of the United States**

7 “To the extent that this chapter conflicts with an ob-
8 ligation of the United States arising out of any treaty or
9 other form of agreement to which it is a party with one
10 or more other countries, the requirements of the treaty
11 or agreement prevail.

12 **“§ 1504. Commencement of ancillary case**

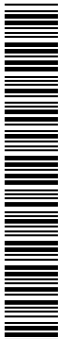
13 “A case under this chapter is commenced by the filing
14 of a petition for recognition of a foreign proceeding under
15 section 1515.

16 **“§ 1505. Authorization to act in a foreign country**

17 “A trustee or another entity (including an examiner)
18 may be authorized by the court to act in a foreign country
19 on behalf of an estate created under section 541. An entity
20 authorized to act under this section may act in any way
21 permitted by the applicable foreign law.

22 **“§ 1506. Public policy exception**

23 “Nothing in this chapter prevents the court from re-
24 fusing to take an action governed by this chapter if the



1 action would be manifestly contrary to the public policy
2 of the United States.

3 **“§ 1507. Additional assistance**

4 “(a) Subject to the specific limitations stated else-
5 where in this chapter the court, if recognition is granted,
6 may provide additional assistance to a foreign representa-
7 tive under this title or under other laws of the United
8 States.

9 “(b) In determining whether to provide additional as-
10 sistance under this title or under other laws of the United
11 States, the court shall consider whether such additional
12 assistance, consistent with the principles of comity, will
13 reasonably assure—

14 “(1) just treatment of all holders of claims
15 against or interests in the debtor’s property;

16 “(2) protection of claim holders in the United
17 States against prejudice and inconvenience in the
18 processing of claims in such foreign proceeding;

19 “(3) prevention of preferential or fraudulent
20 dispositions of property of the debtor;

21 “(4) distribution of proceeds of the debtor’s
22 property substantially in accordance with the order
23 prescribed by this title; and



1 “(5) if appropriate, the provision of an oppor-
2 tunity for a fresh start for the individual that such
3 foreign proceeding concerns.

4 **“§ 1508. Interpretation**

5 “In interpreting this chapter, the court shall consider
6 its international origin, and the need to promote an appli-
7 cation of this chapter that is consistent with the applica-
8 tion of similar statutes adopted by foreign jurisdictions.
9 “SUBCHAPTER II—ACCESS OF FOREIGN REP-
10 RESENTATIVES AND CREDITORS TO THE
11 COURT

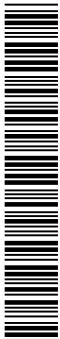
12 **“§ 1509. Right of direct access**

13 “(a) A foreign representative may commence a case
14 under section 1504 by filing directly with the court a peti-
15 tion for recognition of a foreign proceeding under section
16 1515.

17 “(b) If the court grants recognition under section
18 1515, and subject to any limitations that the court may
19 impose consistent with the policy of this chapter—

20 “(1) the foreign representative has the capacity
21 to sue and be sued in a court in the United States;

22 “(2) the foreign representative may apply di-
23 rectly to a court in the United States for appropriate
24 relief in that court; and



1 “(3) a court in the United States shall grant
2 comity or cooperation to the foreign representative.

3 “(c) A request for comity or cooperation by a foreign
4 representative in a court in the United States other than
5 the court which granted recognition shall be accompanied
6 by a certified copy of an order granting recognition under
7 section 1517.

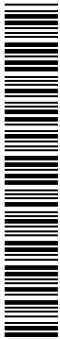
8 “(d) If the court denies recognition under this chap-
9 ter, the court may issue any appropriate order necessary
10 to prevent the foreign representative from obtaining com-
11 ity or cooperation from courts in the United States.

12 “(e) Whether or not the court grants recognition, and
13 subject to sections 306 and 1510, a foreign representative
14 is subject to applicable nonbankruptcy law.

15 “(f) Notwithstanding any other provision of this sec-
16 tion, the failure of a foreign representative to commence
17 a case or to obtain recognition under this chapter does
18 not affect any right the foreign representative may have
19 to sue in a court in the United States to collect or recover
20 a claim which is the property of the debtor.

21 **“§ 1510. Limited jurisdiction**

22 “The sole fact that a foreign representative files a
23 petition under section 1515 does not subject the foreign
24 representative to the jurisdiction of any court in the
25 United States for any other purpose.



1 **“§ 1511. Commencement of case under section 301 or**
2 **303**

3 “(a) Upon recognition, a foreign representative may
4 commence—

5 “(1) an involuntary case under section 303; or

6 “(2) a voluntary case under section 301 or 302,
7 if the foreign proceeding is a foreign main pro-
8 ceeding.

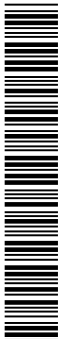
9 “(b) The petition commencing a case under sub-
10 section (a) must be accompanied by a certified copy of
11 an order granting recognition. The court where the peti-
12 tion for recognition has been filed must be advised of the
13 foreign representative’s intent to commence a case under
14 subsection (a) prior to such commencement.

15 **“§ 1512. Participation of a foreign representative in a**
16 **case under this title**

17 “Upon recognition of a foreign proceeding, the for-
18 eign representative in the recognized proceeding is entitled
19 to participate as a party in interest in a case regarding
20 the debtor under this title.

21 **“§ 1513. Access of foreign creditors to a case under**
22 **this title**

23 “(a) Foreign creditors have the same rights regarding
24 the commencement of, and participation in, a case under
25 this title as domestic creditors.



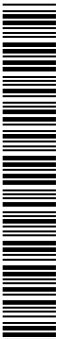
1 “(b)(1) Subsection (a) does not change or codify
2 present law as to the priority of claims under section 507
3 or 726, except that the claim of a foreign creditor under
4 those sections shall not be given a lower priority than that
5 of general unsecured claims without priority solely because
6 the holder of such claim is a foreign creditor.

7 “(2)(A) Subsection (a) and paragraph (1) do not
8 change or codify present law as to the allowability of for-
9 eign revenue claims or other foreign public law claims in
10 a proceeding under this title.

11 “(B) Allowance and priority as to a foreign tax claim
12 or other foreign public law claim shall be governed by any
13 applicable tax treaty of the United States, under the con-
14 ditions and circumstances specified therein.

15 **“§ 1514. Notification to foreign creditors concerning a**
16 **case under this title**

17 “(a) Whenever in a case under this title notice is to
18 be given to creditors generally or to any class or category
19 of creditors, such notice shall also be given to the known
20 creditors generally, or to creditors in the notified class or
21 category, that do not have addresses in the United States.
22 The court may order that appropriate steps be taken with
23 a view to notifying any creditor whose address is not yet
24 known.



1 “(b) Such notification to creditors with foreign ad-
2 dresses described in subsection (a) shall be given individ-
3 ually, unless the court considers that, under the cir-
4 cumstances, some other form of notification would be
5 more appropriate. No letter or other formality is required.

6 “(c) When a notification of commencement of a case
7 is to be given to foreign creditors, such notification shall—

8 “(1) indicate the time period for filing proofs of
9 claim and specify the place for filing such proofs of
10 claim;

11 “(2) indicate whether secured creditors need to
12 file proofs of claim; and

13 “(3) contain any other information required to
14 be included in such notification to creditors under
15 this title and the orders of the court.

16 “(d) Any rule of procedure or order of the court as
17 to notice or the filing of a proof of claim shall provide
18 such additional time to creditors with foreign addresses
19 as is reasonable under the circumstances.

20 “SUBCHAPTER III—RECOGNITION OF A
21 FOREIGN PROCEEDING AND RELIEF

22 “§ 1515. **Application for recognition**

23 “(a) A foreign representative applies to the court for
24 recognition of a foreign proceeding in which the foreign



1 representative has been appointed by filing a petition for
2 recognition.

3 “(b) A petition for recognition shall be accompanied
4 by—

5 “(1) a certified copy of the decision com-
6 mencing such foreign proceeding and appointing the
7 foreign representative;

8 “(2) a certificate from the foreign court affirm-
9 ing the existence of such foreign proceeding and of
10 the appointment of the foreign representative; or

11 “(3) in the absence of evidence referred to in
12 paragraphs (1) and (2), any other evidence accept-
13 able to the court of the existence of such foreign
14 proceeding and of the appointment of the foreign
15 representative.

16 “(c) A petition for recognition shall also be accom-
17 panied by a statement identifying all foreign proceedings
18 with respect to the debtor that are known to the foreign
19 representative.

20 “(d) The documents referred to in paragraphs (1)
21 and (2) of subsection (b) shall be translated into English.
22 The court may require a translation into English of addi-
23 tional documents.



1 **“§ 1516. Presumptions concerning recognition**

2 “(a) If the decision or certificate referred to in section
3 1515(b) indicates that the foreign proceeding is a foreign
4 proceeding and that the person or body is a foreign rep-
5 resentative, the court is entitled to so presume.

6 “(b) The court is entitled to presume that documents
7 submitted in support of the petition for recognition are
8 authentic, whether or not they have been legalized.

9 “(c) In the absence of evidence to the contrary, the
10 debtor’s registered office, or habitual residence in the case
11 of an individual, is presumed to be the center of the debt-
12 or’s main interests.

13 **“§ 1517. Order granting recognition**

14 “(a) Subject to section 1506, after notice and a hear-
15 ing, an order recognizing a foreign proceeding shall be en-
16 tered if—

17 “(1) such foreign proceeding for which recogni-
18 tion is sought is a foreign main proceeding or for-
19 eign nonmain proceeding within the meaning of sec-
20 tion 1502;

21 “(2) the foreign representative applying for rec-
22 ognition is a person or body; and

23 “(3) the petition meets the requirements of sec-
24 tion 1515.

25 “(b) Such foreign proceeding shall be recognized—



1 “(1) as a foreign main proceeding if it is pend-
2 ing in the country where the debtor has the center
3 of its main interests; or

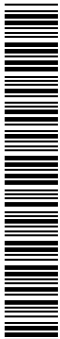
4 “(2) as a foreign nonmain proceeding if the
5 debtor has an establishment within the meaning of
6 section 1502 in the foreign country where the pro-
7 ceeding is pending.

8 “(c) A petition for recognition of a foreign proceeding
9 shall be decided upon at the earliest possible time. Entry
10 of an order recognizing a foreign proceeding constitutes
11 recognition under this chapter.

12 “(d) The provisions of this subchapter do not prevent
13 modification or termination of recognition if it is shown
14 that the grounds for granting it were fully or partially
15 lacking or have ceased to exist, but in considering such
16 action the court shall give due weight to possible prejudice
17 to parties that have relied upon the order granting rec-
18 ognition. A case under this chapter may be closed in the
19 manner prescribed under section 350.

20 **“§ 1518. Subsequent information**

21 “From the time of filing the petition for recognition
22 of a foreign proceeding, the foreign representative shall
23 file with the court promptly a notice of change of status
24 concerning—



1 “(1) any substantial change in the status of
2 such foreign proceeding or the status of the foreign
3 representative’s appointment; and

4 “(2) any other foreign proceeding regarding the
5 debtor that becomes known to the foreign represent-
6 ative.

7 **“§ 1519. Relief that may be granted upon filing peti-**
8 **tion for recognition**

9 “(a) From the time of filing a petition for recognition
10 until the court rules on the petition, the court may, at
11 the request of the foreign representative, where relief is
12 urgently needed to protect the assets of the debtor or the
13 interests of the creditors, grant relief of a provisional na-
14 ture, including—

15 “(1) staying execution against the debtor’s as-
16 sets;

17 “(2) entrusting the administration or realiza-
18 tion of all or part of the debtor’s assets located in
19 the United States to the foreign representative or
20 another person authorized by the court, including an
21 examiner, in order to protect and preserve the value
22 of assets that, by their nature or because of other
23 circumstances, are perishable, susceptible to devalu-
24 ation or otherwise in jeopardy; and



1 “(3) any relief referred to in paragraph (3),
2 (4), or (7) of section 1521(a).

3 “(b) Unless extended under section 1521(a)(6), the
4 relief granted under this section terminates when the peti-
5 tion for recognition is granted.

6 “(c) It is a ground for denial of relief under this sec-
7 tion that such relief would interfere with the administra-
8 tion of a foreign main proceeding.

9 “(d) The court may not enjoin a police or regulatory
10 act of a governmental unit, including a criminal action or
11 proceeding, under this section.

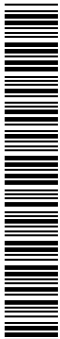
12 “(e) The standards, procedures, and limitations ap-
13 plicable to an injunction shall apply to relief under this
14 section.

15 “(f) The exercise of rights not subject to the stay
16 arising under section 362(a) pursuant to paragraph (6),
17 (7), (17), or (27) of section 362(b) or pursuant to section
18 362(n) shall not be stayed by any order of a court or ad-
19 ministrative agency in any proceeding under this chapter.

20 **“§ 1520. Effects of recognition of a foreign main pro-**
21 **ceeding**

22 “(a) Upon recognition of a foreign proceeding that
23 is a foreign main proceeding—

24 “(1) sections 361 and 362 apply with respect to
25 the debtor and the property of the debtor that is



1 within the territorial jurisdiction of the United
2 States;

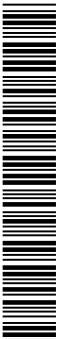
3 “(2) sections 363, 549, and 552 apply to a
4 transfer of an interest of the debtor in property that
5 is within the territorial jurisdiction of the United
6 States to the same extent that the sections would
7 apply to property of an estate;

8 “(3) unless the court orders otherwise, the for-
9 eign representative may operate the debtor’s busi-
10 ness and may exercise the rights and powers of a
11 trustee under and to the extent provided by sections
12 363 and 552; and

13 “(4) section 552 applies to property of the debt-
14 or that is within the territorial jurisdiction of the
15 United States.

16 “(b) Subsection (a) does not affect the right to com-
17 mence an individual action or proceeding in a foreign
18 country to the extent necessary to preserve a claim against
19 the debtor.

20 “(c) Subsection (a) does not affect the right of a for-
21 eign representative or an entity to file a petition com-
22 mencing a case under this title or the right of any party
23 to file claims or take other proper actions in such a case.



1 **“§ 1521. Relief that may be granted upon recognition**

2 “(a) Upon recognition of a foreign proceeding, wheth-
3 er main or nonmain, where necessary to effectuate the
4 purpose of this chapter and to protect the assets of the
5 debtor or the interests of the creditors, the court may, at
6 the request of the foreign representative, grant any appro-
7 priate relief, including—

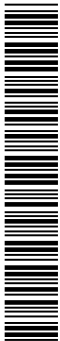
8 “(1) staying the commencement or continuation
9 of an individual action or proceeding concerning the
10 debtor’s assets, rights, obligations or liabilities to the
11 extent they have not been stayed under section
12 1520(a);

13 “(2) staying execution against the debtor’s as-
14 sets to the extent it has not been stayed under sec-
15 tion 1520(a);

16 “(3) suspending the right to transfer, encumber
17 or otherwise dispose of any assets of the debtor to
18 the extent this right has not been suspended under
19 section 1520(a);

20 “(4) providing for the examination of witnesses,
21 the taking of evidence or the delivery of information
22 concerning the debtor’s assets, affairs, rights, obliga-
23 tions or liabilities;

24 “(5) entrusting the administration or realiza-
25 tion of all or part of the debtor’s assets within the
26 territorial jurisdiction of the United States to the



1 foreign representative or another person, including
2 an examiner, authorized by the court;

3 “(6) extending relief granted under section
4 1519(a); and

5 “(7) granting any additional relief that may be
6 available to a trustee, except for relief available
7 under sections 522, 544, 545, 547, 548, 550, and
8 724(a).

9 “(b) Upon recognition of a foreign proceeding, wheth-
10 er main or nonmain, the court may, at the request of the
11 foreign representative, entrust the distribution of all or
12 part of the debtor’s assets located in the United States
13 to the foreign representative or another person, including
14 an examiner, authorized by the court, provided that the
15 court is satisfied that the interests of creditors in the
16 United States are sufficiently protected.

17 “(c) In granting relief under this section to a rep-
18 resentative of a foreign nonmain proceeding, the court
19 must be satisfied that the relief relates to assets that,
20 under the law of the United States, should be adminis-
21 tered in the foreign nonmain proceeding or concerns infor-
22 mation required in that proceeding.

23 “(d) The court may not enjoin a police or regulatory
24 act of a governmental unit, including a criminal action or
25 proceeding, under this section.



1 “(e) The standards, procedures, and limitations ap-
2 plicable to an injunction shall apply to relief under para-
3 graphs (1), (2), (3), and (6) of subsection (a).

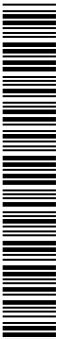
4 “(f) The exercise of rights not subject to the stay
5 arising under section 362(a) pursuant to paragraph (6),
6 (7), (17), or (27) of section 362(b) or pursuant to section
7 362(n) shall not be stayed by any order of a court or ad-
8 ministrative agency in any proceeding under this chapter.

9 **“§ 1522. Protection of creditors and other interested**
10 **persons**

11 “(a) The court may grant relief under section 1519
12 or 1521, or may modify or terminate relief under sub-
13 section (c), only if the interests of the creditors and other
14 interested entities, including the debtor, are sufficiently
15 protected.

16 “(b) The court may subject relief granted under sec-
17 tion 1519 or 1521, or the operation of the debtor’s busi-
18 ness under section 1520(a)(3), to conditions it considers
19 appropriate, including the giving of security or the filing
20 of a bond.

21 “(c) The court may, at the request of the foreign rep-
22 resentative or an entity affected by relief granted under
23 section 1519 or 1521, or at its own motion, modify or
24 terminate such relief.



1 “(d) Section 1104(d) shall apply to the appointment
2 of an examiner under this chapter. Any examiner shall
3 comply with the qualification requirements imposed on a
4 trustee by section 322.

5 **“§ 1523. Actions to avoid acts detrimental to creditors**

6 “(a) Upon recognition of a foreign proceeding, the
7 foreign representative has standing in a case concerning
8 the debtor pending under another chapter of this title to
9 initiate actions under sections 522, 544, 545, 547, 548,
10 550, 553, and 724(a).

11 “(b) When a foreign proceeding is a foreign nonmain
12 proceeding, the court must be satisfied that an action
13 under subsection (a) relates to assets that, under United
14 States law, should be administered in the foreign nonmain
15 proceeding.

16 **“§ 1524. Intervention by a foreign representative**

17 “Upon recognition of a foreign proceeding, the for-
18 eign representative may intervene in any proceedings in
19 a State or Federal court in the United States in which
20 the debtor is a party.



1 “SUBCHAPTER IV—COOPERATION WITH FOR-
2 EIGN COURTS AND FOREIGN REPRESENTA-
3 TIVES

4 “§ 1525. Cooperation and direct communication be-
5 tween the court and foreign courts or for-
6 eign representatives

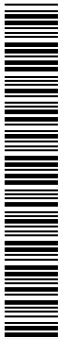
7 “(a) Consistent with section 1501, the court shall co-
8 operate to the maximum extent possible with a foreign
9 court or a foreign representative, either directly or
10 through the trustee.

11 “(b) The court is entitled to communicate directly
12 with, or to request information or assistance directly from,
13 a foreign court or a foreign representative, subject to the
14 rights of a party in interest to notice and participation.

15 “§ 1526. Cooperation and direct communication be-
16 tween the trustee and foreign courts or
17 foreign representatives

18 “(a) Consistent with section 1501, the trustee or
19 other person, including an examiner, authorized by the
20 court, shall, subject to the supervision of the court, cooper-
21 ate to the maximum extent possible with a foreign court
22 or a foreign representative.

23 “(b) The trustee or other person, including an exam-
24 iner, authorized by the court is entitled, subject to the su-



1 pervision of the court, to communicate directly with a for-
2 eign court or a foreign representative.

3 **“§ 1527. Forms of cooperation**

4 “Cooperation referred to in sections 1525 and 1526
5 may be implemented by any appropriate means,
6 including—

7 “(1) appointment of a person or body, including
8 an examiner, to act at the direction of the court;

9 “(2) communication of information by any
10 means considered appropriate by the court;

11 “(3) coordination of the administration and su-
12 pervision of the debtor’s assets and affairs;

13 “(4) approval or implementation of agreements
14 concerning the coordination of proceedings; and

15 “(5) coordination of concurrent proceedings re-
16 garding the same debtor.

17 **“SUBCHAPTER V—CONCURRENT PROCEEDINGS**

18 **“§ 1528. Commencement of a case under this title**
19 **after recognition of a foreign main pro-**
20 **ceeding**

21 “After recognition of a foreign main proceeding, a
22 case under another chapter of this title may be commenced
23 only if the debtor has assets in the United States. The
24 effects of such case shall be restricted to the assets of the
25 debtor that are within the territorial jurisdiction of the



1 United States and, to the extent necessary to implement
2 cooperation and coordination under sections 1525, 1526,
3 and 1527, to other assets of the debtor that are within
4 the jurisdiction of the court under sections 541(a) of this
5 title, and 1334(e) of title 28, to the extent that such other
6 assets are not subject to the jurisdiction and control of
7 a foreign proceeding that has been recognized under this
8 chapter.

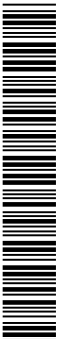
9 **“§ 1529. Coordination of a case under this title and a**
10 **foreign proceeding**

11 “If a foreign proceeding and a case under another
12 chapter of this title are pending concurrently regarding
13 the same debtor, the court shall seek cooperation and co-
14 ordination under sections 1525, 1526, and 1527, and the
15 following shall apply:

16 “(1) If the case in the United States pending
17 at the time the petition for recognition of such for-
18 eign proceeding is filed—

19 “(A) any relief granted under section 1519
20 or 1521 must be consistent with the relief
21 granted in the case in the United States; and

22 “(B) section 1520 does not apply even if
23 such foreign proceeding is recognized as a for-
24 eign main proceeding.



1 “(2) If a case in the United States under this
2 title commences after recognition, or after the date
3 of the filing of the petition for recognition, of such
4 foreign proceeding—

5 “(A) any relief in effect under section
6 1519 or 1521 shall be reviewed by the court
7 and shall be modified or terminated if incon-
8 sistent with the case in the United States; and

9 “(B) if such foreign proceeding is a foreign
10 main proceeding, the stay and suspension re-
11 ferred to in section 1520(a) shall be modified or
12 terminated if inconsistent with the relief grant-
13 ed in the case in the United States.

14 “(3) In granting, extending, or modifying relief
15 granted to a representative of a foreign nonmain
16 proceeding, the court must be satisfied that the re-
17 lief relates to assets that, under the laws of the
18 United States, should be administered in the foreign
19 nonmain proceeding or concerns information re-
20 quired in that proceeding.

21 “(4) In achieving cooperation and coordination
22 under sections 1528 and 1529, the court may grant
23 any of the relief authorized under section 305.



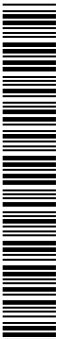
1 **“§ 1530. Coordination of more than 1 foreign pro-**
2 **ceeding**

3 “In matters referred to in section 1501, with respect
4 to more than 1 foreign proceeding regarding the debtor,
5 the court shall seek cooperation and coordination under
6 sections 1525, 1526, and 1527, and the following shall
7 apply:

8 “(1) Any relief granted under section 1519 or
9 1521 to a representative of a foreign nonmain pro-
10 ceeding after recognition of a foreign main pro-
11 ceeding must be consistent with the foreign main
12 proceeding.

13 “(2) If a foreign main proceeding is recognized
14 after recognition, or after the filing of a petition for
15 recognition, of a foreign nonmain proceeding, any
16 relief in effect under section 1519 or 1521 shall be
17 reviewed by the court and shall be modified or termi-
18 nated if inconsistent with the foreign main pro-
19 ceeding.

20 “(3) If, after recognition of a foreign nonmain
21 proceeding, another foreign nonmain proceeding is
22 recognized, the court shall grant, modify, or termi-
23 nate relief for the purpose of facilitating coordina-
24 tion of the proceedings.



1 **“§ 1531. Presumption of insolvency based on recogni-**
 2 **tion of a foreign main proceeding**

3 “In the absence of evidence to the contrary, recogni-
 4 tion of a foreign main proceeding is, for the purpose of
 5 commencing a proceeding under section 303, proof that
 6 the debtor is generally not paying its debts as such debts
 7 become due.

8 **“§ 1532. Rule of payment in concurrent proceedings**

9 “Without prejudice to secured claims or rights in
 10 rem, a creditor who has received payment with respect to
 11 its claim in a foreign proceeding pursuant to a law relating
 12 to insolvency may not receive a payment for the same
 13 claim in a case under any other chapter of this title re-
 14 garding the debtor, so long as the payment to other credi-
 15 tors of the same class is proportionately less than the pay-
 16 ment the creditor has already received.”.

17 (b) CLERICAL AMENDMENT.—The table of chapters
 18 for title 11, United States Code, is amended by inserting
 19 after the item relating to chapter 13 the following:

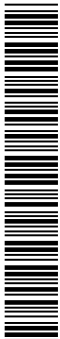
“15. Ancillary and Other Cross-Border Cases 1501”.

20 **SEC. 702. OTHER AMENDMENTS TO TITLES 11 AND 28,**

21 **UNITED STATES CODE.**

22 (a) APPLICABILITY OF CHAPTERS.—Section 103 of
 23 title 11, United States Code, is amended—

24 (1) in subsection (a), by inserting before the pe-
 25 riod the following: “, and this chapter, sections 307,



1 362(n), 555 through 557, and 559 through 562
2 apply in a case under chapter 15”; and

3 (2) by adding at the end the following:

4 “(k) Chapter 15 applies only in a case under such
5 chapter, except that—

6 “(1) sections 1505, 1513, and 1514 apply in all
7 cases under this title; and

8 “(2) section 1509 applies whether or not a case
9 under this title is pending.”.

10 (b) DEFINITIONS.—Section 101 of title 11, United
11 States Code, is amended by striking paragraphs (23) and
12 (24) and inserting the following:

13 “(23) ‘foreign proceeding’ means a collective ju-
14 dicial or administrative proceeding in a foreign coun-
15 try, including an interim proceeding, under a law re-
16 lating to insolvency or adjustment of debt in which
17 proceeding the assets and affairs of the debtor are
18 subject to control or supervision by a foreign court,
19 for the purpose of reorganization or liquidation;

20 “(24) ‘foreign representative’ means a person
21 or body, including a person or body appointed on an
22 interim basis, authorized in a foreign proceeding to
23 administer the reorganization or the liquidation of
24 the debtor’s assets or affairs or to act as a rep-
25 resentative of such foreign proceeding;”.



1 (c) AMENDMENTS TO TITLE 28, UNITED STATES
2 CODE.—

3 (1) PROCEDURES.—Section 157(b)(2) of title
4 28, United States Code, is amended—

5 (A) in subparagraph (N), by striking
6 “and” at the end;

7 (B) in subparagraph (O), by striking the
8 period at the end and inserting “; and”; and

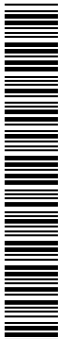
9 (C) by adding at the end the following:

10 “(P) recognition of foreign proceedings
11 and other matters under chapter 15 of title
12 11.”.

13 (2) BANKRUPTCY CASES AND PROCEEDINGS.—
14 Section 1334(c) of title 28, United States Code, is
15 amended by striking “Nothing in” and inserting
16 “Except with respect to a case under chapter 15 of
17 title 11, nothing in”.

18 (3) DUTIES OF TRUSTEES.—Section 586(a)(3)
19 of title 28, United States Code, is amended by strik-
20 ing “or 13” and inserting “13, or 15”.

21 (4) VENUE OF CASES ANCILLARY TO FOREIGN
22 PROCEEDINGS.—Section 1410 of title 28, United
23 States Code, is amended to read as follows:



1 **“§ 1410. Venue of cases ancillary to foreign pro-**
2 **ceedings**

3 “A case under chapter 15 of title 11 may be com-
4 menced in the district court of the United States for the
5 district—

6 “(1) in which the debtor has its principal place
7 of business or principal assets in the United States;

8 “(2) if the debtor does not have a place of busi-
9 ness or assets in the United States, in which there
10 is pending against the debtor an action or pro-
11 ceeding in a Federal or State court; or

12 “(3) in a case other than those specified in
13 paragraph (1) or (2), in which venue will be con-
14 sistent with the interests of justice and the conven-
15 ience of the parties, having regard to the relief
16 sought by the foreign representative.”.

17 (d) OTHER SECTIONS OF TITLE 11.—Title 11 of the
18 United States Code is amended—

19 (1) in section 109(b), by striking paragraph (3)
20 and inserting the following:

21 “(3)(A) a foreign insurance company, engaged
22 in such business in the United States; or

23 “(B) a foreign bank, savings bank, cooperative
24 bank, savings and loan association, building and
25 loan association, or credit union, that has a branch
26 or agency (as defined in section 1(b) of the Inter-



1 national Banking Act of 1978 in the United
2 States.”;

3 (2) in section 303, by striking subsection (k);

4 (3) by striking section 304;

5 (4) in the table of sections for chapter 3 by
6 striking the item relating to section 304;

7 (5) in section 306 by striking “, 304,” each
8 place it appears;

9 (6) in section 305(a) by striking paragraph (2)
10 and inserting the following:

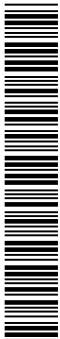
11 “(2)(A) a petition under section 1515 for rec-
12 ognition of a foreign proceeding has been granted;
13 and

14 “(B) the purposes of chapter 15 of this title
15 would be best served by such dismissal or suspen-
16 sion.”; and

17 (7) in section 508—

18 (A) by striking subsection (a); and

19 (B) in subsection (b), by striking “(b)”.



TITLE VII—FINANCIAL CONTRACT PROVISIONS

SEC. 801. TREATMENT OF CERTAIN AGREEMENTS BY CON- SERVATORS OR RECEIVERS OF INSURED DE- POSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CON-
TRACT.—Section 11(e)(8)(D) of the Federal Deposit In-
surance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(1) by striking “subsection—” and inserting
“subsection, the following definitions shall apply:”;
and

(2) in clause (i), by inserting “, resolution, or
order” after “any similar agreement that the Cor-
poration determines by regulation”.

(b) DEFINITION OF SECURITIES CONTRACT.—Sec-
tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act
(12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-
lows:

“(ii) SECURITIES CONTRACT.—The
term ‘securities contract’—

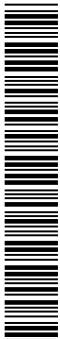
“(I) means a contract for the
purchase, sale, or loan of a security, a
certificate of deposit, a mortgage loan,
or any interest in a mortgage loan, a
group or index of securities, certifi-



1 cates of deposit, or mortgage loans or
2 interests therein (including any inter-
3 est therein or based on the value
4 thereof) or any option on any of the
5 foregoing, including any option to
6 purchase or sell any such security,
7 certificate of deposit, mortgage loan,
8 interest, group or index, or option,
9 and including any repurchase or re-
10 verse repurchase transaction on any
11 such security, certificate of deposit,
12 mortgage loan, interest, group or
13 index, or option;

14 “(II) does not include any pur-
15 chase, sale, or repurchase obligation
16 under a participation in a commercial
17 mortgage loan unless the Corporation
18 determines by regulation, resolution,
19 or order to include any such agree-
20 ment within the meaning of such
21 term;

22 “(III) means any option entered
23 into on a national securities exchange
24 relating to foreign currencies;



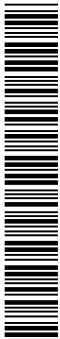
1 “(IV) means the guarantee by or
2 to any securities clearing agency of
3 any settlement of cash, securities, cer-
4 tificates of deposit, mortgage loans or
5 interests therein, group or index of se-
6 curities, certificates of deposit, or
7 mortgage loans or interests therein
8 (including any interest therein or
9 based on the value thereof) or option
10 on any of the foregoing, including any
11 option to purchase or sell any such se-
12 curity, certificate of deposit, mortgage
13 loan, interest, group or index, or op-
14 tion;

15 “(V) means any margin loan;

16 “(VI) means any other agree-
17 ment or transaction that is similar to
18 any agreement or transaction referred
19 to in this clause;

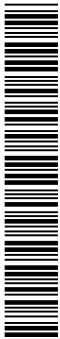
20 “(VII) means any combination of
21 the agreements or transactions re-
22 ferred to in this clause;

23 “(VIII) means any option to
24 enter into any agreement or trans-
25 action referred to in this clause;



1 “(IX) means a master agreement
2 that provides for an agreement or
3 transaction referred to in subclause
4 (I), (III), (IV), (V), (VI), (VII), or
5 (VIII), together with all supplements
6 to any such master agreement, with-
7 out regard to whether the master
8 agreement provides for an agreement
9 or transaction that is not a securities
10 contract under this clause, except that
11 the master agreement shall be consid-
12 ered to be a securities contract under
13 this clause only with respect to each
14 agreement or transaction under the
15 master agreement that is referred to
16 in subclause (I), (III), (IV), (V), (VI),
17 (VII), or (VIII); and

18 “(X) means any security agree-
19 ment or arrangement or other credit
20 enhancement related to any agree-
21 ment or transaction referred to in this
22 clause, including any guarantee or re-
23 imbursement obligation in connection
24 with any agreement or transaction re-
25 ferred to in this clause.”.



1 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-
2 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act
3 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-
4 lows:

5 “(iii) COMMODITY CONTRACT.—The
6 term ‘commodity contract’ means—

7 “(I) with respect to a futures
8 commission merchant, a contract for
9 the purchase or sale of a commodity
10 for future delivery on, or subject to
11 the rules of, a contract market or
12 board of trade;

13 “(II) with respect to a foreign fu-
14 tures commission merchant, a foreign
15 future;

16 “(III) with respect to a leverage
17 transaction merchant, a leverage
18 transaction;

19 “(IV) with respect to a clearing
20 organization, a contract for the pur-
21 chase or sale of a commodity for fu-
22 ture delivery on, or subject to the
23 rules of, a contract market or board
24 of trade that is cleared by such clear-
25 ing organization, or commodity option



1 traded on, or subject to the rules of,
2 a contract market or board of trade
3 that is cleared by such clearing orga-
4 nization;

5 “(V) with respect to a commodity
6 options dealer, a commodity option;

7 “(VI) any other agreement or
8 transaction that is similar to any
9 agreement or transaction referred to
10 in this clause;

11 “(VII) any combination of the
12 agreements or transactions referred to
13 in this clause;

14 “(VIII) any option to enter into
15 any agreement or transaction referred
16 to in this clause;

17 “(IX) a master agreement that
18 provides for an agreement or trans-
19 action referred to in subclause (I),
20 (II), (III), (IV), (V), (VI), (VII), or
21 (VIII), together with all supplements
22 to any such master agreement, with-
23 out regard to whether the master
24 agreement provides for an agreement
25 or transaction that is not a com-



1 modify contract under this clause, ex-
2 cept that the master agreement shall
3 be considered to be a commodity con-
4 tract under this clause only with re-
5 spect to each agreement or trans-
6 action under the master agreement
7 that is referred to in subclause (I),
8 (II), (III), (IV), (V), (VI), (VII), or
9 (VIII); or

10 “(X) any security agreement or
11 arrangement or other credit enhance-
12 ment related to any agreement or
13 transaction referred to in this clause,
14 including any guarantee or reimburse-
15 ment obligation in connection with
16 any agreement or transaction referred
17 to in this clause.”.

18 (d) DEFINITION OF FORWARD CONTRACT.—Section
19 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
20 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

21 “(iv) FORWARD CONTRACT.—The
22 term ‘forward contract’ means—

23 “(I) a contract (other than a
24 commodity contract) for the purchase,
25 sale, or transfer of a commodity or

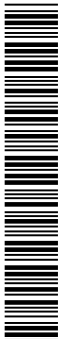


1 any similar good, article, service,
2 right, or interest which is presently or
3 in the future becomes the subject of
4 dealing in the forward contract trade,
5 or product or byproduct thereof, with
6 a maturity date more than 2 days
7 after the date the contract is entered
8 into, including, a repurchase trans-
9 action, reverse repurchase transaction,
10 consignment, lease, swap, hedge
11 transaction, deposit, loan, option, allo-
12 cated transaction, unallocated trans-
13 action, or any other similar agree-
14 ment;

15 “(II) any combination of agree-
16 ments or transactions referred to in
17 subclauses (I) and (III);

18 “(III) any option to enter into
19 any agreement or transaction referred
20 to in subclause (I) or (II);

21 “(IV) a master agreement that
22 provides for an agreement or trans-
23 action referred to in subclauses (I),
24 (II), or (III), together with all supple-
25 ments to any such master agreement,



1 without regard to whether the master
2 agreement provides for an agreement
3 or transaction that is not a forward
4 contract under this clause, except that
5 the master agreement shall be consid-
6 ered to be a forward contract under
7 this clause only with respect to each
8 agreement or transaction under the
9 master agreement that is referred to
10 in subclause (I), (II), or (III); or

11 “(V) any security agreement or
12 arrangement or other credit enhance-
13 ment related to any agreement or
14 transaction referred to in subclause
15 (I), (II), (III), or (IV), including any
16 guarantee or reimbursement obliga-
17 tion in connection with any agreement
18 or transaction referred to in any such
19 subclause.”.

20 (e) DEFINITION OF REPURCHASE AGREEMENT.—
21 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance
22 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as
23 follows:

24 “(v) REPURCHASE AGREEMENT.—The
25 term ‘repurchase agreement’ (which defini-



tion also applies to a reverse repurchase agreement)—

“(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above,



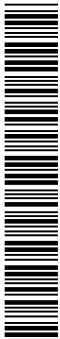
1 at a date certain not later than 1 year
2 after such transfers or on demand,
3 against the transfer of funds, or any
4 other similar agreement;

5 “(II) does not include any repur-
6 chase obligation under a participation
7 in a commercial mortgage loan unless
8 the Corporation determines by regula-
9 tion, resolution, or order to include
10 any such participation within the
11 meaning of such term;

12 “(III) means any combination of
13 agreements or transactions referred to
14 in subclauses (I) and (IV);

15 “(IV) means any option to enter
16 into any agreement or transaction re-
17 ferred to in subclause (I) or (III);

18 “(V) means a master agreement
19 that provides for an agreement or
20 transaction referred to in subclause
21 (I), (III), or (IV), together with all
22 supplements to any such master
23 agreement, without regard to whether
24 the master agreement provides for an
25 agreement or transaction that is not a



1 repurchase agreement under this
2 clause, except that the master agree-
3 ment shall be considered to be a re-
4 purchase agreement under this sub-
5 clause only with respect to each agree-
6 ment or transaction under the master
7 agreement that is referred to in sub-
8 clause (I), (III), or (IV); and

9 “(VI) means any security agree-
10 ment or arrangement or other credit
11 enhancement related to any agree-
12 ment or transaction referred to in
13 subclause (I), (III), (IV), or (V), in-
14 cluding any guarantee or reimburse-
15 ment obligation in connection with
16 any agreement or transaction referred
17 to in any such subclause.

18 For purposes of this clause, the term
19 ‘qualified foreign government security’
20 means a security that is a direct obligation
21 of, or that is fully guaranteed by, the cen-
22 tral government of a member of the Orga-
23 nization for Economic Cooperation and
24 Development (as determined by regulation

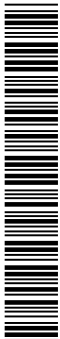


1 or order adopted by the appropriate Fed-
2 eral banking authority).”.

3 (f) DEFINITION OF SWAP AGREEMENT.—Section
4 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12
5 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

6 “(vi) SWAP AGREEMENT.—The term
7 ‘swap agreement’ means—

8 “(I) any agreement, including the
9 terms and conditions incorporated by
10 reference in any such agreement,
11 which is an interest rate swap, option,
12 future, or forward agreement, includ-
13 ing a rate floor, rate cap, rate collar,
14 cross-currency rate swap, and basis
15 swap; a spot, same day-tomorrow, to-
16 morrow-next, forward, or other for-
17 eign exchange or precious metals
18 agreement; a currency swap, option,
19 future, or forward agreement; an eq-
20 uity index or equity swap, option, fu-
21 ture, or forward agreement; a debt
22 index or debt swap, option, future, or
23 forward agreement; a total return,
24 credit spread or credit swap, option,
25 future, or forward agreement; a com-



1 commodity index or commodity swap, op-
2 tion, future, or forward agreement; or
3 a weather swap, weather derivative, or
4 weather option;

5 “(II) any agreement or trans-
6 action that is similar to any other
7 agreement or transaction referred to
8 in this clause and that is of a type
9 that has been, is presently, or in the
10 future becomes, the subject of recur-
11 rent dealings in the swap markets (in-
12 cluding terms and conditions incor-
13 porated by reference in such agree-
14 ment) and that is a forward, swap, fu-
15 ture, or option on one or more rates,
16 currencies, commodities, equity securi-
17 ties or other equity instruments, debt
18 securities or other debt instruments,
19 quantitative measures associated with
20 an occurrence, extent of an occur-
21 rence, or contingency associated with
22 a financial, commercial, or economic
23 consequence, or economic or financial
24 indices or measures of economic or fi-
25 nancial risk or value;

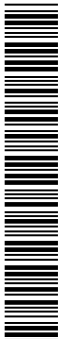


1 “(III) any combination of agree-
2 ments or transactions referred to in
3 this clause;

4 “(IV) any option to enter into
5 any agreement or transaction referred
6 to in this clause;

7 “(V) a master agreement that
8 provides for an agreement or trans-
9 action referred to in subclause (I),
10 (II), (III), or (IV), together with all
11 supplements to any such master
12 agreement, without regard to whether
13 the master agreement contains an
14 agreement or transaction that is not a
15 swap agreement under this clause, ex-
16 cept that the master agreement shall
17 be considered to be a swap agreement
18 under this clause only with respect to
19 each agreement or transaction under
20 the master agreement that is referred
21 to in subclause (I), (II), (III), or (IV);
22 and

23 “(VI) any security agreement or
24 arrangement or other credit enhance-
25 ment related to any agreements or



1 transactions referred to in subclause
2 (I), (II), (III), (IV), or (V), including
3 any guarantee or reimbursement obli-
4 gation in connection with any agree-
5 ment or transaction referred to in any
6 such subclause.

7 Such term is applicable for purposes of
8 this subsection only and shall not be con-
9 strued or applied so as to challenge or af-
10 fect the characterization, definition, or
11 treatment of any swap agreement under
12 any other statute, regulation, or rule, in-
13 cluding the Securities Act of 1933, the Se-
14 curities Exchange Act of 1934, the Public
15 Utility Holding Company Act of 1935, the
16 Trust Indenture Act of 1939, the Invest-
17 ment Company Act of 1940, the Invest-
18 ment Advisers Act of 1940, the Securities
19 Investor Protection Act of 1970, the Com-
20 modity Exchange Act, the Gramm-Leach-
21 Bliley Act, and the Legal Certainty for
22 Bank Products Act of 2000.”.

23 (g) DEFINITION OF TRANSFER.—Section
24 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
25 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:



1 “(viii) TRANSFER.—The term ‘trans-
2 fer’ means every mode, direct or indirect,
3 absolute or conditional, voluntary or invol-
4 untary, of disposing of or parting with
5 property or with an interest in property,
6 including retention of title as a security in-
7 terest and foreclosure of the depository in-
8 stitution’s equity of redemption.”.

9 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
10 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-
11 ance Act (12 U.S.C. 1821(e)(8)) is amended—

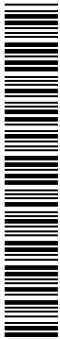
12 (1) in subparagraph (A)—

13 (A) by striking “paragraph (10)” and in-
14 serting “paragraphs (9) and (10)”;

15 (B) in clause (i), by striking “to cause the
16 termination or liquidation” and inserting “such
17 person has to cause the termination, liquida-
18 tion, or acceleration”; and

19 (C) by striking clause (ii) and inserting the
20 following:

21 “(ii) any right under any security
22 agreement or arrangement or other credit
23 enhancement related to one or more quali-
24 fied financial contracts described in clause
25 (i);”; and



1 (2) in subparagraph (E), by striking clause (ii)
2 and inserting the following:

3 “(ii) any right under any security
4 agreement or arrangement or other credit
5 enhancement related to one or more quali-
6 fied financial contracts described in clause
7 (i);”.

8 (i) AVOIDANCE OF TRANSFERS.—Section
9 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
10 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
11 5242 of the Revised Statutes of the United States or any
12 other Federal or State law relating to the avoidance of
13 preferential or fraudulent transfers,” before “the Corpora-
14 tion”.

15 **SEC. 802. AUTHORITY OF THE CORPORATION WITH RE-**
16 **SPECT TO FAILED AND FAILING INSTITU-**
17 **TIONS.**

18 (a) IN GENERAL.—Section 11(e)(8) of the Federal
19 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is
20 amended—

21 (1) in subparagraph (E), by striking “other
22 than paragraph (12) of this subsection, subsection
23 (d)(9)” and inserting “other than subsections (d)(9)
24 and (e)(10)”; and



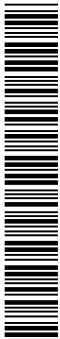
1 (2) by adding at the end the following new sub-
2 paragraphs:

3 “(F) CLARIFICATION.—No provision of law
4 shall be construed as limiting the right or
5 power of the Corporation, or authorizing any
6 court or agency to limit or delay, in any man-
7 ner, the right or power of the Corporation to
8 transfer any qualified financial contract in ac-
9 cordance with paragraphs (9) and (10) of this
10 subsection or to disaffirm or repudiate any such
11 contract in accordance with subsection (e)(1) of
12 this section.

13 “(G) WALKAWAY CLAUSES NOT EFFEC-
14 TIVE.—

15 “(i) IN GENERAL.—Notwithstanding
16 the provisions of subparagraphs (A) and
17 (E), and sections 403 and 404 of the Fed-
18 eral Deposit Insurance Corporation Im-
19 provement Act of 1991, no walkaway
20 clause shall be enforceable in a qualified fi-
21 nancial contract of an insured depository
22 institution in default.

23 “(ii) WALKAWAY CLAUSE DEFINED.—
24 For purposes of this subparagraph, the
25 term ‘walkaway clause’ means a provision



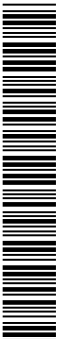
1 in a qualified financial contract that, after
2 calculation of a value of a party's position
3 or an amount due to or from 1 of the par-
4 ties in accordance with its terms upon ter-
5 mination, liquidation, or acceleration of the
6 qualified financial contract, either does not
7 create a payment obligation of a party or
8 extinguishes a payment obligation of a
9 party in whole or in part solely because of
10 such party's status as a nondefaulting
11 party.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—
13 Section 11(e)(12)(A) of the Federal Deposit Insurance
14 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting
15 “or the exercise of rights or powers by” after “the ap-
16 pointment of”.

17 **SEC. 803. AMENDMENTS RELATING TO TRANSFERS OF**
18 **QUALIFIED FINANCIAL CONTRACTS.**

19 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-
20 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)
21 of the Federal Deposit Insurance Act (12 U.S.C.
22 1821(e)(9)) is amended to read as follows:

23 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
24 TRACTS.—

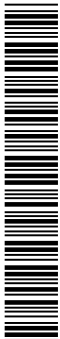


1 “(A) IN GENERAL.—In making any trans-
2 fer of assets or liabilities of a depository institu-
3 tion in default which includes any qualified fi-
4 nancial contract, the conservator or receiver for
5 such depository institution shall either—

6 “(i) transfer to one financial institu-
7 tion, other than a financial institution for
8 which a conservator, receiver, trustee in
9 bankruptcy, or other legal custodian has
10 been appointed or which is otherwise the
11 subject of a bankruptcy or insolvency
12 proceeding—

13 “(I) all qualified financial con-
14 tracts between any person or any af-
15 filiate of such person and the deposi-
16 tory institution in default;

17 “(II) all claims of such person or
18 any affiliate of such person against
19 such depository institution under any
20 such contract (other than any claim
21 which, under the terms of any such
22 contract, is subordinated to the claims
23 of general unsecured creditors of such
24 institution);



1 “(III) all claims of such deposi-
2 tory institution against such person or
3 any affiliate of such person under any
4 such contract; and

5 “(IV) all property securing or
6 any other credit enhancement for any
7 contract described in subclause (I) or
8 any claim described in subclause (II)
9 or (III) under any such contract; or

10 “(ii) transfer none of the qualified fi-
11 nancial contracts, claims, property or other
12 credit enhancement referred to in clause (i)
13 (with respect to such person and any affil-
14 iate of such person).

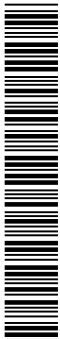
15 “(B) TRANSFER TO FOREIGN BANK, FOR-
16 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
17 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
18 STITUTION.—In transferring any qualified fi-
19 nancial contracts and related claims and prop-
20 erty under subparagraph (A)(i), the conservator
21 or receiver for the depository institution shall
22 not make such transfer to a foreign bank, fi-
23 nancial institution organized under the laws of
24 a foreign country, or a branch or agency of a
25 foreign bank or financial institution unless,



1 under the law applicable to such bank, financial
2 institution, branch or agency, to the qualified
3 financial contracts, and to any netting contract,
4 any security agreement or arrangement or other
5 credit enhancement related to one or more
6 qualified financial contracts, the contractual
7 rights of the parties to such qualified financial
8 contracts, netting contracts, security agree-
9 ments or arrangements, or other credit en-
10 hancements are enforceable substantially to the
11 same extent as permitted under this section.

12 “(C) TRANSFER OF CONTRACTS SUBJECT
13 TO THE RULES OF A CLEARING ORGANIZA-
14 TION.—In the event that a conservator or re-
15 ceiver transfers any qualified financial contract
16 and related claims, property, and credit en-
17 hancements pursuant to subparagraph (A)(i)
18 and such contract is cleared by or subject to the
19 rules of a clearing organization, the clearing or-
20 ganization shall not be required to accept the
21 transferee as a member by virtue of the trans-
22 fer.

23 “(D) DEFINITIONS.—For purposes of this
24 paragraph, the term ‘financial institution’
25 means a broker or dealer, a depository institu-

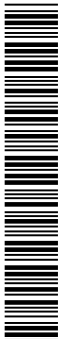


1 tion, a futures commission merchant, or any
2 other institution, as determined by the Corpora-
3 tion by regulation to be a financial institution,
4 and the term ‘clearing organization’ has the
5 same meaning as in section 402 of the Federal
6 Deposit Insurance Corporation Improvement
7 Act of 1991.’’.

8 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT
9 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal
10 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is
11 amended in the material immediately following clause (ii)
12 by striking “the conservator” and all that follows through
13 the period and inserting the following: “the conservator
14 or receiver shall notify any person who is a party to any
15 such contract of such transfer by 5:00 p.m. (eastern time)
16 on the business day following the date of the appointment
17 of the receiver in the case of a receivership, or the business
18 day following such transfer in the case of a conservator-
19 ship.”.

20 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF
21 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-
22 posit Insurance Act (12 U.S.C. 1821(e)(10)) is
23 amended—

24 (1) by redesignating subparagraph (B) as sub-
25 paragraph (D); and



1 (2) by inserting after subparagraph (A) the fol-
2 lowing new subparagraphs:

3 “(B) CERTAIN RIGHTS NOT ENFORCE-
4 ABLE.—

5 “(i) RECEIVERSHIP.—A person who is
6 a party to a qualified financial contract
7 with an insured depository institution may
8 not exercise any right that such person has
9 to terminate, liquidate, or net such con-
10 tract under paragraph (8)(A) of this sub-
11 section or section 403 or 404 of the Fed-
12 eral Deposit Insurance Corporation Im-
13 provement Act of 1991, solely by reason of
14 or incidental to the appointment of a re-
15 ceiver for the depository institution (or the
16 insolvency or financial condition of the de-
17 pository institution for which the receiver
18 has been appointed)—

19 “(I) until 5:00 p.m. (eastern
20 time) on the business day following
21 the date of the appointment of the re-
22 ceiver; or

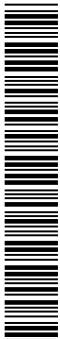
23 “(II) after the person has re-
24 ceived notice that the contract has



1 been transferred pursuant to para-
2 graph (9)(A).

3 “(ii) CONSERVATORSHIP.—A person
4 who is a party to a qualified financial con-
5 tract with an insured depository institution
6 may not exercise any right that such per-
7 son has to terminate, liquidate, or net such
8 contract under paragraph (8)(E) of this
9 subsection or section 403 or 404 of the
10 Federal Deposit Insurance Corporation
11 Improvement Act of 1991, solely by reason
12 of or incidental to the appointment of a
13 conservator for the depository institution
14 (or the insolvency or financial condition of
15 the depository institution for which the
16 conservator has been appointed).

17 “(iii) NOTICE.—For purposes of this
18 paragraph, the Corporation as receiver or
19 conservator of an insured depository insti-
20 tution shall be deemed to have notified a
21 person who is a party to a qualified finan-
22 cial contract with such depository institu-
23 tion if the Corporation has taken steps
24 reasonably calculated to provide notice to



1 such person by the time specified in sub-
2 paragraph (A).

3 “(C) TREATMENT OF BRIDGE BANKS.—

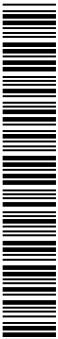
4 The following institutions shall not be consid-
5 ered to be a financial institution for which a
6 conservator, receiver, trustee in bankruptcy, or
7 other legal custodian has been appointed or
8 which is otherwise the subject of a bankruptcy
9 or insolvency proceeding for purposes of para-
10 graph (9):

11 “(i) A bridge bank.

12 “(ii) A depository institution orga-
13 nized by the Corporation, for which a con-
14 servator is appointed either—

15 “(I) immediately upon the orga-
16 nization of the institution; or

17 “(II) at the time of a purchase
18 and assumption transaction between
19 the depository institution and the Cor-
20 poration as receiver for a depository
21 institution in default.”.



1 **SEC. 804. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
2 **REPUDIATION OF QUALIFIED FINANCIAL**
3 **CONTRACTS.**

4 Section 11(e) of the Federal Deposit Insurance Act
5 (12 U.S.C. 1821(e)) is amended—

6 (1) by redesignating paragraphs (11) through
7 (15) as paragraphs (12) through (16), respectively;

8 (2) by inserting after paragraph (10) the fol-
9 lowing new paragraph:

10 “(11) DISAFFIRMANCE OR REPUDIATION OF
11 QUALIFIED FINANCIAL CONTRACTS.—In exercising
12 the rights of disaffirmance or repudiation of a con-
13 servator or receiver with respect to any qualified fi-
14 nancial contract to which an insured depository in-
15 stitution is a party, the conservator or receiver for
16 such institution shall either—

17 “(A) disaffirm or repudiate all qualified fi-
18 nancial contracts between—

19 “(i) any person or any affiliate of
20 such person; and

21 “(ii) the depository institution in de-
22 fault; or

23 “(B) disaffirm or repudiate none of the
24 qualified financial contracts referred to in sub-
25 paragraph (A) (with respect to such person or
26 any affiliate of such person).”; and



1 (3) by adding at the end the following new
2 paragraph:

3 “(17) SAVINGS CLAUSE.—The meanings of
4 terms used in this subsection are applicable for pur-
5 poses of this subsection only, and shall not be con-
6 strued or applied so as to challenge or affect the
7 characterization, definition, or treatment of any
8 similar terms under any other statute, regulation, or
9 rule, including the Gramm-Leach-Bliley Act, the
10 Legal Certainty for Bank Products Act of 2000, the
11 securities laws (as that term is defined in section
12 3(a)(47) of the Securities Exchange Act of 1934),
13 and the Commodity Exchange Act.”.

14 **SEC. 805. CLARIFYING AMENDMENT RELATING TO MASTER**
15 **AGREEMENTS.**

16 Section 11(e)(8)(D)(vii) of the Federal Deposit In-
17 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to
18 read as follows:

19 “(vii) TREATMENT OF MASTER
20 AGREEMENT AS ONE AGREEMENT.—Any
21 master agreement for any contract or
22 agreement described in any preceding
23 clause of this subparagraph (or any master
24 agreement for such master agreement or
25 agreements), together with all supplements



1 to such master agreement, shall be treated
2 as a single agreement and a single quali-
3 fied financial contract. If a master agree-
4 ment contains provisions relating to agree-
5 ments or transactions that are not them-
6 selves qualified financial contracts, the
7 master agreement shall be deemed to be a
8 qualified financial contract only with re-
9 spect to those transactions that are them-
10 selves qualified financial contracts.”.

11 **SEC. 806. FEDERAL DEPOSIT INSURANCE CORPORATION**
12 **IMPROVEMENT ACT OF 1991.**

13 (a) DEFINITIONS.—Section 402 of the Federal De-
14 posit Insurance Corporation Improvement Act of 1991 (12
15 U.S.C. 4402) is amended—

16 (1) in paragraph (2)—

17 (A) in subparagraph (A)(ii), by inserting
18 before the semicolon “, or is exempt from such
19 registration by order of the Securities and Ex-
20 change Commission”; and

21 (B) in subparagraph (B), by inserting be-
22 fore the period “, that has been granted an ex-
23emption under section 4(c)(1) of the Com-
24modity Exchange Act, or that is a multilateral



1 clearing organization (as defined in section 408
2 of this Act)’’;

3 (2) in paragraph (6)—

4 (A) by redesignating subparagraphs (B)
5 through (D) as subparagraphs (C) through (E),
6 respectively;

7 (B) by inserting after subparagraph (A)
8 the following new subparagraph:

9 “(B) an uninsured national bank or an un-
10 insured State bank that is a member of the
11 Federal Reserve System, if the national bank or
12 State member bank is not eligible to make ap-
13 plication to become an insured bank under sec-
14 tion 5 of the Federal Deposit Insurance Act;’’;
15 and

16 (C) by amending subparagraph (C), so re-
17 designated, to read as follows:

18 “(C) a branch or agency of a foreign bank,
19 a foreign bank and any branch or agency of the
20 foreign bank, or the foreign bank that estab-
21 lished the branch or agency, as those terms are
22 defined in section 1(b) of the International
23 Banking Act of 1978;’’;

24 (3) in paragraph (11), by inserting before the
25 period “and any other clearing organization with



1 which such clearing organization has a netting con-
2 tract”;

3 (4) by amending paragraph (14)(A)(i) to read
4 as follows:

5 “(i) means a contract or agreement
6 between 2 or more financial institutions,
7 clearing organizations, or members that
8 provides for netting present or future pay-
9 ment obligations or payment entitlements
10 (including liquidation or close out values
11 relating to such obligations or entitle-
12 ments) among the parties to the agree-
13 ment; and”;

14 (5) by adding at the end the following new
15 paragraph:

16 “(15) PAYMENT.—The term ‘payment’ means a
17 payment of United States dollars, another currency,
18 or a composite currency, and a noncash delivery, in-
19 cluding a payment or delivery to liquidate an
20 unmatured obligation.”.

21 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
22 TRACTS.—Section 403 of the Federal Deposit Insurance
23 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
24 is amended—



1 (1) by striking subsection (a) and inserting the
2 following:

3 “(a) GENERAL RULE.—Notwithstanding any other
4 provision of State or Federal law (other than paragraphs
5 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
6 Deposit Insurance Act or any order authorized under sec-
7 tion 5(b)(2) of the Securities Investor Protection Act of
8 1970), the covered contractual payment obligations and
9 the covered contractual payment entitlements between any
10 2 financial institutions shall be netted in accordance with,
11 and subject to the conditions of, the terms of any applica-
12 ble netting contract (except as provided in section
13 561(b)(2) of title 11, United States Code).”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(f) ENFORCEABILITY OF SECURITY AGREE-
17 MENTS.—The provisions of any security agreement or ar-
18 rangement or other credit enhancement related to one or
19 more netting contracts between any 2 financial institu-
20 tions shall be enforceable in accordance with their terms
21 (except as provided in section 561(b)(2) of title 11, United
22 States Code), and shall not be stayed, avoided, or other-
23 wise limited by any State or Federal law (other than para-
24 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the



1 Federal Deposit Insurance Act and section 5(b)(2) of the
2 Securities Investor Protection Act of 1970).”.

3 (c) ENFORCEABILITY OF CLEARING ORGANIZATION
4 NETTING CONTRACTS.—Section 404 of the Federal De-
5 posit Insurance Corporation Improvement Act of 1991 (12
6 U.S.C. 4404) is amended—

7 (1) by striking subsection (a) and inserting the
8 following:

9 “(a) GENERAL RULE.—Notwithstanding any other
10 provision of State or Federal law (other than paragraphs
11 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
12 Deposit Insurance Act and any order authorized under
13 section 5(b)(2) of the Securities Investor Protection Act
14 of 1970), the covered contractual payment obligations and
15 the covered contractual payment entitlements of a member
16 of a clearing organization to and from all other members
17 of a clearing organization shall be netted in accordance
18 with and subject to the conditions of any applicable net-
19 ting contract (except as provided in section 561(b)(2) of
20 title 11, United States Code).”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(h) ENFORCEABILITY OF SECURITY AGREE-
24 MENTS.—The provisions of any security agreement or ar-
25 rangement or other credit enhancement related to one or

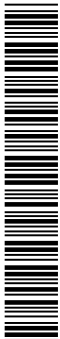


1 more netting contracts between any 2 members of a clear-
2 ing organization shall be enforceable in accordance with
3 their terms (except as provided in section 561(b)(2) of
4 title 11, United States Code), and shall not be stayed,
5 avoided, or otherwise limited by any State or Federal law
6 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-
7 tion 11(e) of the Federal Deposit Insurance Act and sec-
8 tion 5(b)(2) of the Securities Investor Protection Act of
9 1970).”.

10 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
11 SURED NATIONAL BANKS, UNINSURED FEDERAL
12 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE
13 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The
14 Federal Deposit Insurance Corporation Improvement Act
15 of 1991 (12 U.S.C. 4401 et seq.) is amended—

16 (1) by redesignating section 407 as section
17 407A; and

18 (2) by inserting after section 406 the following
19 new section:



1 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
2 **NATIONAL BANKS, UNINSURED FEDERAL**
3 **BRANCHES AND AGENCIES, CERTAIN UNIN-**
4 **SURED STATE MEMBER BANKS, AND EDGE**
5 **ACT CORPORATIONS.**

6 “(a) IN GENERAL.—Notwithstanding any other pro-
7 vision of law, paragraphs (8), (9), (10), and (11) of section
8 11(e) of the Federal Deposit Insurance Act shall apply
9 to an uninsured national bank or uninsured Federal
10 branch or Federal agency, a corporation chartered under
11 section 25A of the Federal Reserve Act, or an uninsured
12 State member bank which operates, or operates as, a mul-
13 tilateral clearing organization pursuant to section 409 of
14 this Act, except that for such purpose—

15 “(1) any reference to the ‘Corporation as re-
16 ceiver’ or ‘the receiver or the Corporation’ shall refer
17 to the receiver appointed by the Comptroller of the
18 Currency in the case of an uninsured national bank
19 or uninsured Federal branch or agency, or to the re-
20 ceiver appointed by the Board of Governors of the
21 Federal Reserve System in the case of a corporation
22 chartered under section 25A of the Federal Reserve
23 Act or an uninsured State member bank;

24 “(2) any reference to the ‘Corporation’ (other
25 than in section 11(e)(8)(D) of such Act), the ‘Cor-
26 poration, whether acting as such or as conservator



1 or receiver', a 'receiver', or a 'conservator' shall refer
2 to the receiver or conservator appointed by the
3 Comptroller of the Currency in the case of an unin-
4 sured national bank or uninsured Federal branch or
5 agency, or to the receiver or conservator appointed
6 by the Board of Governors of the Federal Reserve
7 System in the case of a corporation chartered under
8 section 25A of the Federal Reserve Act or an unin-
9 sured State member bank; and

10 “(3) any reference to an ‘insured depository in-
11 stitution’ or ‘depository institution’ shall refer to an
12 uninsured national bank, an uninsured Federal
13 branch or Federal agency, a corporation chartered
14 under section 25A of the Federal Reserve Act, or an
15 uninsured State member bank which operates, or op-
16 erates as, a multilateral clearing organization pursu-
17 ant to section 409 of this Act.

18 “(b) LIABILITY.—The liability of a receiver or conser-
19 vator of an uninsured national bank, uninsured Federal
20 branch or agency, a corporation chartered under section
21 25A of the Federal Reserve Act, or an uninsured State
22 member bank which operates, or operates as, a multilat-
23 eral clearing organization pursuant to section 409 of this
24 Act, shall be determined in the same manner and subject
25 to the same limitations that apply to receivers and con-



1 servators of insured depository institutions under section
2 11(e) of the Federal Deposit Insurance Act.

3 “(c) REGULATORY AUTHORITY.—

4 “(1) IN GENERAL.—The Comptroller of the
5 Currency in the case of an uninsured national bank
6 or uninsured Federal branch or agency and the
7 Board of Governors of the Federal Reserve System
8 in the case of a corporation chartered under section
9 25A of the Federal Reserve Act, or an uninsured
10 State member bank that operates, or operates as, a
11 multilateral clearing organization pursuant to sec-
12 tion 409 of this Act, in consultation with the Fed-
13 eral Deposit Insurance Corporation, may each pro-
14 mulgate regulations solely to implement this section.

15 “(2) SPECIFIC REQUIREMENT.—In promul-
16 gating regulations, limited solely to implementing
17 paragraphs (8), (9), (10), and (11) of section 11(e)
18 of the Federal Deposit Insurance Act, the Comp-
19 troller of the Currency and the Board of Governors
20 of the Federal Reserve System each shall ensure
21 that the regulations generally are consistent with the
22 regulations and policies of the Federal Deposit In-
23 surance Corporation adopted pursuant to the Fed-
24 eral Deposit Insurance Act.



1 “(d) DEFINITIONS.—For purposes of this section, the
2 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign
3 bank’ have the same meanings as in section 1(b) of the
4 International Banking Act of 1978.”.

5 **SEC. 807. BANKRUPTCY LAW AMENDMENTS.**

6 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-
7 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,
8 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-
9 RITIES CONTRACT.—Title 11, United States Code, is
10 amended—

11 (1) in section 101—

12 (A) in paragraph (25)—

13 (i) by striking “means a contract”
14 and inserting “means—
15 “(A) a contract”;

16 (ii) by striking “, or any combination
17 thereof or option thereon;” and inserting
18 “, or any other similar agreement;”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(B) any combination of agreements or
22 transactions referred to in subparagraphs (A)
23 and (C);



1 “(C) any option to enter into an agreement
2 or transaction referred to in subparagraph (A)
3 or (B);

4 “(D) a master agreement that provides for
5 an agreement or transaction referred to in sub-
6 paragraph (A), (B), or (C), together with all
7 supplements to any such master agreement,
8 without regard to whether such master agree-
9 ment provides for an agreement or transaction
10 that is not a forward contract under this para-
11 graph, except that such master agreement shall
12 be considered to be a forward contract under
13 this paragraph only with respect to each agree-
14 ment or transaction under such master agree-
15 ment that is referred to in subparagraph (A),
16 (B), or (C); or

17 “(E) any security agreement or arrange-
18 ment, or other credit enhancement related to
19 any agreement or transaction referred to in
20 subparagraph (A), (B), (C), or (D), including
21 any guarantee or reimbursement obligation by
22 or to a forward contract merchant or financial
23 participant in connection with any agreement or
24 transaction referred to in any such subpara-
25 graph, but not to exceed the damages in con-



1 nection with any such agreement or transaction,
2 measured in accordance with section 562;”;

3 (B) in paragraph (46), by striking “on any
4 day during the period beginning 90 days before
5 the date of” and inserting “at any time before”;

6 (C) by amending paragraph (47) to read
7 as follows:

8 “(47) ‘repurchase agreement’ (which definition
9 also applies to a reverse repurchase agreement)—

10 “(A) means—

11 “(i) an agreement, including related
12 terms, which provides for the transfer of
13 one or more certificates of deposit, mort-
14 gage related securities (as defined in sec-
15 tion 3 of the Securities Exchange Act of
16 1934), mortgage loans, interests in mort-
17 gage related securities or mortgage loans,
18 eligible bankers’ acceptances, qualified for-
19 eign government securities (defined as a
20 security that is a direct obligation of, or
21 that is fully guaranteed by, the central
22 government of a member of the Organiza-
23 tion for Economic Cooperation and Devel-
24 opment), or securities that are direct obli-
25 gations of, or that are fully guaranteed by,



1 the United States or any agency of the
2 United States against the transfer of funds
3 by the transferee of such certificates of de-
4 posit, eligible bankers' acceptances, securi-
5 ties, mortgage loans, or interests, with a
6 simultaneous agreement by such transferee
7 to transfer to the transferor thereof certifi-
8 cates of deposit, eligible bankers' accept-
9 ance, securities, mortgage loans, or inter-
10 ests of the kind described in this clause, at
11 a date certain not later than 1 year after
12 such transfer or on demand, against the
13 transfer of funds;

14 “(ii) any combination of agreements
15 or transactions referred to in clauses (i)
16 and (iii);

17 “(iii) an option to enter into an agree-
18 ment or transaction referred to in clause
19 (i) or (ii);

20 “(iv) a master agreement that pro-
21 vides for an agreement or transaction re-
22 ferred to in clause (i), (ii), or (iii), together
23 with all supplements to any such master
24 agreement, without regard to whether such
25 master agreement provides for an agree-

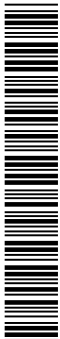


1 ment or transaction that is not a repur-
2 chase agreement under this paragraph, ex-
3 cept that such master agreement shall be
4 considered to be a repurchase agreement
5 under this paragraph only with respect to
6 each agreement or transaction under the
7 master agreement that is referred to in
8 clause (i), (ii), or (iii); or

9 “(v) any security agreement or ar-
10 rangement or other credit enhancement re-
11 lated to any agreement or transaction re-
12 ferred to in clause (i), (ii), (iii), or (iv), in-
13 cluding any guarantee or reimbursement
14 obligation by or to a repo participant or fi-
15 nancial participant in connection with any
16 agreement or transaction referred to in
17 any such clause, but not to exceed the
18 damages in connection with any such
19 agreement or transaction, measured in ac-
20 cordance with section 562 of this title; and

21 “(B) does not include a repurchase obliga-
22 tion under a participation in a commercial
23 mortgage loan;”;

24 (D) in paragraph (48), by inserting “, or
25 exempt from such registration under such sec-



1 tion pursuant to an order of the Securities and
2 Exchange Commission,” after “1934”; and

3 (E) by amending paragraph (53B) to read
4 as follows:

5 “(53B) ‘swap agreement’—

6 “(A) means—

7 “(i) any agreement, including the
8 terms and conditions incorporated by ref-
9 erence in such agreement, which is—

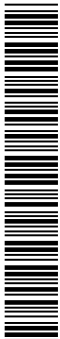
10 “(I) an interest rate swap, op-
11 tion, future, or forward agreement, in-
12 cluding a rate floor, rate cap, rate col-
13 lar, cross-currency rate swap, and
14 basis swap;

15 “(II) a spot, same day-tomorrow,
16 tomorrow-next, forward, or other for-
17 eign exchange or precious metals
18 agreement;

19 “(III) a currency swap, option,
20 future, or forward agreement;

21 “(IV) an equity index or equity
22 swap, option, future, or forward
23 agreement;

24 “(V) a debt index or debt swap,
25 option, future, or forward agreement;



1 “(VI) a total return, credit
2 spread or credit swap, option, future,
3 or forward agreement;

4 “(VII) a commodity index or a
5 commodity swap, option, future, or
6 forward agreement; or

7 “(VIII) a weather swap, weather
8 derivative, or weather option;

9 “(ii) any agreement or transaction
10 that is similar to any other agreement or
11 transaction referred to in this paragraph
12 and that—

13 “(I) is of a type that has been, is
14 presently, or in the future becomes,
15 the subject of recurrent dealings in
16 the swap markets (including terms
17 and conditions incorporated by ref-
18 erence therein); and

19 “(II) is a forward, swap, future,
20 or option on one or more rates, cur-
21 rencies, commodities, equity securities,
22 or other equity instruments, debt se-
23 curities or other debt instruments,
24 quantitative measures associated with
25 an occurrence, extent of an occur-



1 rence, or contingency associated with
2 a financial, commercial, or economic
3 consequence, or economic or financial
4 indices or measures of economic or fi-
5 nancial risk or value;

6 “(iii) any combination of agreements
7 or transactions referred to in this subpara-
8 graph;

9 “(iv) any option to enter into an
10 agreement or transaction referred to in
11 this subparagraph;

12 “(v) a master agreement that provides
13 for an agreement or transaction referred to
14 in clause (i), (ii), (iii), or (iv), together
15 with all supplements to any such master
16 agreement, and without regard to whether
17 the master agreement contains an agree-
18 ment or transaction that is not a swap
19 agreement under this paragraph, except
20 that the master agreement shall be consid-
21 ered to be a swap agreement under this
22 paragraph only with respect to each agree-
23 ment or transaction under the master
24 agreement that is referred to in clause (i),
25 (ii), (iii), or (iv); or



1 “(vi) any security agreement or ar-
2 rangement or other credit enhancement re-
3 lated to any agreements or transactions re-
4 ferred to in clause (i) through (v), includ-
5 ing any guarantee or reimbursement obli-
6 gation by or to a swap participant or fi-
7 nancial participant in connection with any
8 agreement or transaction referred to in
9 any such clause, but not to exceed the
10 damages in connection with any such
11 agreement or transaction, measured in ac-
12 cordance with section 562; and

13 “(B) is applicable for purposes of this title
14 only, and shall not be construed or applied so
15 as to challenge or affect the characterization,
16 definition, or treatment of any swap agreement
17 under any other statute, regulation, or rule, in-
18 cluding the Securities Act of 1933, the Securi-
19 ties Exchange Act of 1934, the Public Utility
20 Holding Company Act of 1935, the Trust In-
21 denture Act of 1939, the Investment Company
22 Act of 1940, the Investment Advisers Act of
23 1940, the Securities Investor Protection Act of
24 1970, the Commodity Exchange Act, the



1 Gramm-Leach-Bliley Act, and the Legal Cer-
2 tainty for Bank Products Act of 2000;”;

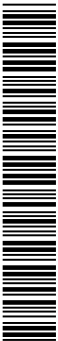
3 (2) in section 741(7), by striking paragraph (7)
4 and inserting the following:

5 “(7) ‘securities contract’—

6 “(A) means—

7 “(i) a contract for the purchase, sale,
8 or loan of a security, a certificate of de-
9 posit, a mortgage loan or any interest in a
10 mortgage loan, a group or index of securi-
11 ties, certificates of deposit, or mortgage
12 loans or interests therein (including an in-
13 terest therein or based on the value there-
14 of), or option on any of the foregoing, in-
15 cluding an option to purchase or sell any
16 such security, certificate of deposit, mort-
17 gage loan, interest, group or index, or op-
18 tion, and including any repurchase or re-
19 verse repurchase transaction on any such
20 security, certificate of deposit, mortgage
21 loan, interest, group or index, or option;

22 “(ii) any option entered into on a na-
23 tional securities exchange relating to for-
24 eign currencies;



1 “(iii) the guarantee by or to any secu-
2 rities clearing agency of a settlement of
3 cash, securities, certificates of deposit,
4 mortgage loans or interests therein, group
5 or index of securities, or mortgage loans or
6 interests therein (including any interest
7 therein or based on the value thereof), or
8 option on any of the foregoing, including
9 an option to purchase or sell any such se-
10 curity, certificate of deposit, mortgage
11 loan, interest, group or index, or option;

12 “(iv) any margin loan;

13 “(v) any other agreement or trans-
14 action that is similar to an agreement or
15 transaction referred to in this subpara-
16 graph;

17 “(vi) any combination of the agree-
18 ments or transactions referred to in this
19 subparagraph;

20 “(vii) any option to enter into any
21 agreement or transaction referred to in
22 this subparagraph;

23 “(viii) a master agreement that pro-
24 vides for an agreement or transaction re-
25 ferred to in clause (i), (ii), (iii), (iv), (v),



1 (vi), or (vii), together with all supplements
2 to any such master agreement, without re-
3 gard to whether the master agreement pro-
4 vides for an agreement or transaction that
5 is not a securities contract under this sub-
6 paragraph, except that such master agree-
7 ment shall be considered to be a securities
8 contract under this subparagraph only with
9 respect to each agreement or transaction
10 under such master agreement that is re-
11 ferred to in clause (i), (ii), (iii), (iv), (v),
12 (vi), or (vii); or

13 “(ix) any security agreement or ar-
14 rangement or other credit enhancement re-
15 lated to any agreement or transaction re-
16 ferred to in this subparagraph, including
17 any guarantee or reimbursement obligation
18 by or to a stockbroker, securities clearing
19 agency, financial institution, or financial
20 participant in connection with any agree-
21 ment or transaction referred to in this sub-
22 paragraph, but not to exceed the damages
23 in connection with any such agreement or
24 transaction, measured in accordance with
25 section 562; and



1 “(B) does not include any purchase, sale,
2 or repurchase obligation under a participation
3 in a commercial mortgage loan;”; and
4 (3) in section 761(4)—

5 (A) by striking “or” at the end of subpara-
6 graph (D); and

7 (B) by adding at the end the following:

8 “(F) any other agreement or transaction
9 that is similar to an agreement or transaction
10 referred to in this paragraph;

11 “(G) any combination of the agreements or
12 transactions referred to in this paragraph;

13 “(H) any option to enter into an agree-
14 ment or transaction referred to in this para-
15 graph;

16 “(I) a master agreement that provides for
17 an agreement or transaction referred to in sub-
18 paragraph (A), (B), (C), (D), (E), (F), (G), or
19 (H), together with all supplements to such mas-
20 ter agreement, without regard to whether the
21 master agreement provides for an agreement or
22 transaction that is not a commodity contract
23 under this paragraph, except that the master
24 agreement shall be considered to be a com-
25 modity contract under this paragraph only with



1 respect to each agreement or transaction under
2 the master agreement that is referred to in sub-
3 paragraph (A), (B), (C), (D), (E), (F), (G), or
4 (H); or

5 “(J) any security agreement or arrange-
6 ment or other credit enhancement related to
7 any agreement or transaction referred to in this
8 paragraph, including any guarantee or reim-
9 bursement obligation by or to a commodity
10 broker or financial participant in connection
11 with any agreement or transaction referred to
12 in this paragraph, but not to exceed the dam-
13 ages in connection with any such agreement or
14 transaction, measured in accordance with sec-
15 tion 562;”.

16 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-
17 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-
18 CHANT.—Section 101 of title 11, United States Code, is
19 amended—

20 (1) by striking paragraph (22) and inserting
21 the following:

22 “(22) ‘financial institution’ means—

23 “(A) a Federal reserve bank, or an entity
24 (domestic or foreign) that is a commercial or
25 savings bank, industrial savings bank, savings



1 and loan association, trust company, or receiver
2 or conservator for such entity and, when any
3 such Federal reserve bank, receiver, conservator
4 or entity is acting as agent or custodian for a
5 customer in connection with a securities con-
6 tract (as defined in section 741) such customer;
7 or

8 “(B) in connection with a securities con-
9 tract (as defined in section 741) an investment
10 company registered under the Investment Com-
11 pany Act of 1940;”;

12 (2) by inserting after paragraph (22) the fol-
13 lowing:

14 “(22A) ‘financial participant’ means—

15 “(A) an entity that, at the time it enters
16 into a securities contract, commodity contract,
17 swap agreement, repurchase agreement, or for-
18 ward contract, or at the time of the date of the
19 filing of the petition, has one or more agree-
20 ments or transactions described in paragraph
21 (1), (2), (3), (4), (5), or (6) of section 561(a)
22 with the debtor or any other entity (other than
23 an affiliate) of a total gross dollar value of not
24 less than \$1,000,000,000 in notional or actual
25 principal amount outstanding on any day dur-



1 ing the previous 15-month period, or has gross
2 mark-to-market positions of not less than
3 \$100,000,000 (aggregated across
4 counterparties) in one or more such agreements
5 or transactions with the debtor or any other en-
6 tity (other than an affiliate) on any day during
7 the previous 15-month period; or

8 “(B) a clearing organization (as defined in
9 section 402 of the Federal Deposit Insurance
10 Corporation Improvement Act of 1991);”; and
11 (3) by striking paragraph (26) and inserting
12 the following:

13 “(26) ‘forward contract merchant’ means a
14 Federal reserve bank, or an entity the business of
15 which consists in whole or in part of entering into
16 forward contracts as or with merchants in a com-
17 modity (as defined in section 761) or any similar
18 good, article, service, right, or interest which is pres-
19 ently or in the future becomes the subject of dealing
20 in the forward contract trade;”.

21 (c) DEFINITION OF MASTER NETTING AGREEMENT
22 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
23 tion 101 of title 11, United States Code, is amended by
24 inserting after paragraph (38) the following new para-
25 graphs:

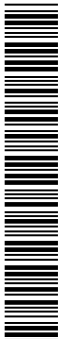


1 “(38A) ‘master netting agreement’—

2 “(A) means an agreement providing for
3 the exercise of rights, including rights of net-
4 ting, setoff, liquidation, termination, accelera-
5 tion, or close out, under or in connection with
6 one or more contracts that are described in any
7 one or more of paragraphs (1) through (5) of
8 section 561(a), or any security agreement or ar-
9 rangement or other credit enhancement related
10 to one or more of the foregoing, including any
11 guarantee or reimbursement obligation related
12 to 1 or more of the foregoing; and

13 “(B) if the agreement contains provisions
14 relating to agreements or transactions that are
15 not contracts described in paragraphs (1)
16 through (5) of section 561(a), shall be deemed
17 to be a master netting agreement only with re-
18 spect to those agreements or transactions that
19 are described in any one or more of paragraphs
20 (1) through (5) of section 561(a);

21 “(38B) ‘master netting agreement participant’
22 means an entity that, at any time before the date of
23 the filing of the petition, is a party to an out-
24 standing master netting agreement with the debt-
25 or;”.



1 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
2 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
3 CHASE AGREEMENTS, AND MASTER NETTING AGREE-
4 MENTS UNDER THE AUTOMATIC-STAY.—

5 (1) IN GENERAL.—Section 362(b) of title 11,
6 United States Code, as amended by sections 224,
7 303, 311, 401, and 718, is amended—

8 (A) in paragraph (6), by inserting “,
9 pledged to, under the control of,” after “held
10 by”;

11 (B) in paragraph (7), by inserting “,
12 pledged to, under the control of,” after “held
13 by”;

14 (C) by striking paragraph (17) and insert-
15 ing the following:

16 “(17) under subsection (a), of the setoff by a
17 swap participant or financial participant of a mutual
18 debt and claim under or in connection with one or
19 more swap agreements that constitutes the setoff of
20 a claim against the debtor for any payment or other
21 transfer of property due from the debtor under or in
22 connection with any swap agreement against any
23 payment due to the debtor from the swap partici-
24 pant or financial participant under or in connection
25 with any swap agreement or against cash, securities,



1 or other property held by, pledged to, under the con-
2 trol of, or due from such swap participant or finan-
3 cial participant to margin, guarantee, secure, or set-
4 tle any swap agreement;”; and

5 (D) by inserting after paragraph (26) the
6 following:

7 “(27) under subsection (a), of the setoff by a
8 master netting agreement participant of a mutual
9 debt and claim under or in connection with one or
10 more master netting agreements or any contract or
11 agreement subject to such agreements that con-
12 stitutes the setoff of a claim against the debtor for
13 any payment or other transfer of property due from
14 the debtor under or in connection with such agree-
15 ments or any contract or agreement subject to such
16 agreements against any payment due to the debtor
17 from such master netting agreement participant
18 under or in connection with such agreements or any
19 contract or agreement subject to such agreements or
20 against cash, securities, or other property held by,
21 pledged to, under the control of, or due from such
22 master netting agreement participant to margin,
23 guarantee, secure, or settle such agreements or any
24 contract or agreement subject to such agreements,
25 to the extent that such participant is eligible to exer-



1 cise such offset rights under paragraph (6), (7), or
2 (17) for each individual contract covered by the mas-
3 ter netting agreement in issue; and”.

4 (2) LIMITATION.—Section 362 of title 11,
5 United States Code, as amended by sections 106,
6 305, 311, and 441, is amended by adding at the end
7 the following:

8 “(o) The exercise of rights not subject to the stay
9 arising under subsection (a) pursuant to paragraph (6),
10 (7), (17), or (27) of subsection (b) shall not be stayed
11 by any order of a court or administrative agency in any
12 proceeding under this title.”.

13 (e) LIMITATION OF AVOIDANCE POWERS UNDER
14 MASTER NETTING AGREEMENT.—Section 546 of title 11,
15 United States Code, is amended—

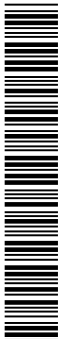
16 (1) in subsection (g) (as added by section 103
17 of Public Law 101–311)—

18 (A) by striking “under a swap agreement”;

19 (B) by striking “in connection with a swap
20 agreement” and inserting “under or in connec-
21 tion with any swap agreement”; and

22 (C) by inserting “or financial participant”
23 after “swap participant”; and

24 (2) by adding at the end the following:



1 “(j) Notwithstanding sections 544, 545, 547,
2 548(a)(1)(B), and 548(b) the trustee may not avoid a
3 transfer made by or to a master netting agreement partici-
4 pant under or in connection with any master netting
5 agreement or any individual contract covered thereby that
6 is made before the commencement of the case, except
7 under section 548(a)(1)(A) and except to the extent that
8 the trustee could otherwise avoid such a transfer made
9 under an individual contract covered by such master net-
10 ting agreement.”.

11 (f) FRAUDULENT TRANSFERS OF MASTER NETTING
12 AGREEMENTS.—Section 548(d)(2) of title 11, United
13 States Code, is amended—

14 (1) in subparagraph (C), by striking “and” at
15 the end;

16 (2) in subparagraph (D), by striking the period
17 and inserting “; and”; and

18 (3) by adding at the end the following new sub-
19 paragraph:

20 “(E) a master netting agreement participant
21 that receives a transfer in connection with a master
22 netting agreement or any individual contract covered
23 thereby takes for value to the extent of such trans-
24 fer, except that, with respect to a transfer under any
25 individual contract covered thereby, to the extent



1 that such master netting agreement participant oth-
2 erwise did not take (or is otherwise not deemed to
3 have taken) such transfer for value.”.

4 (g) TERMINATION OR ACCELERATION OF SECURITIES
5 CONTRACTS.—Section 555 of title 11, United States Code,
6 is amended—

7 (1) by amending the section heading to read as
8 follows:

9 **“§ 555. Contractual right to liquidate, terminate, or**
10 **accelerate a securities contract”;**

11 and

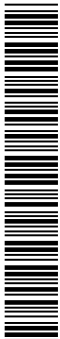
12 (2) in the first sentence, by striking “liquida-
13 tion” and inserting “liquidation, termination, or ac-
14 celeration”.

15 (h) TERMINATION OR ACCELERATION OF COMMOD-
16 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,
17 United States Code, is amended—

18 (1) by amending the section heading to read as
19 follows:

20 **“§ 556. Contractual right to liquidate, terminate, or**
21 **accelerate a commodities contract or for-**
22 **ward contract”;**

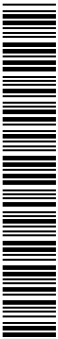
23 (2) in the first sentence, by striking “liquida-
24 tion” and inserting “liquidation, termination, or ac-
25 celeration”; and



1 (3) in the second sentence, by striking “As
2 used” and all that follows through “right,” and in-
3 serting “As used in this section, the term ‘contrac-
4 tual right’ includes a right set forth in a rule or
5 bylaw of a derivatives clearing organization (as de-
6 fined in the Commodity Exchange Act), a multilat-
7 eral clearing organization (as defined in the Federal
8 Deposit Insurance Corporation Improvement Act of
9 1991), a national securities exchange, a national se-
10 curities association, a securities clearing agency, a
11 contract market designated under the Commodity
12 Exchange Act, a derivatives transaction execution
13 facility registered under the Commodity Exchange
14 Act, or a board of trade (as defined in the Com-
15 modity Exchange Act) or in a resolution of the gov-
16 erning board thereof and a right,”.

17 (i) TERMINATION OR ACCELERATION OF REPUR-
18 CHASE AGREEMENTS.—Section 559 of title 11, United
19 States Code, is amended—

20 (1) by amending the section heading to read as
21 follows:



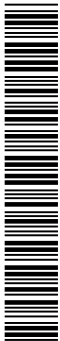
1 **“§ 559. Contractual right to liquidate, terminate, or**
2 **accelerate a repurchase agreement”;**

3 (2) in the first sentence, by striking “liquida-
4 tion” and inserting “liquidation, termination, or ac-
5 celeration”; and

6 (3) in the third sentence, by striking “As used”
7 and all that follows through “right,” and inserting
8 “As used in this section, the term ‘contractual right’
9 includes a right set forth in a rule or bylaw of a de-
10 rivatives clearing organization (as defined in the
11 Commodity Exchange Act), a multilateral clearing
12 organization (as defined in the Federal Deposit In-
13 surance Corporation Improvement Act of 1991), a
14 national securities exchange, a national securities as-
15 sociation, a securities clearing agency, a contract
16 market designated under the Commodity Exchange
17 Act, a derivatives transaction execution facility reg-
18 istered under the Commodity Exchange Act, or a
19 board of trade (as defined in the Commodity Ex-
20 change Act) or in a resolution of the governing
21 board thereof and a right,”.

22 (j) LIQUIDATION, TERMINATION, OR ACCELERATION
23 OF SWAP AGREEMENTS.—Section 560 of title 11, United
24 States Code, is amended—

25 (1) by amending the section heading to read as
26 follows:



1 **“§ 560. Contractual right to liquidate, terminate, or**
2 **accelerate a swap agreement”;**

3 (2) in the first sentence, by striking “termi-
4 nation of a swap agreement” and inserting “liquida-
5 tion, termination, or acceleration of one or more
6 swap agreements”;

7 (3) by striking “in connection with any swap
8 agreement” and inserting “in connection with the
9 termination, liquidation, or acceleration of one or
10 more swap agreements”; and

11 (4) in the second sentence, by striking “As
12 used” and all that follows through “right,” and in-
13 serting “As used in this section, the term ‘contrac-
14 tual right’ includes a right set forth in a rule or
15 bylaw of a derivatives clearing organization (as de-
16 fined in the Commodity Exchange Act), a multilat-
17 eral clearing organization (as defined in the Federal
18 Deposit Insurance Corporation Improvement Act of
19 1991), a national securities exchange, a national se-
20 curities association, a securities clearing agency, a
21 contract market designated under the Commodity
22 Exchange Act, a derivatives transaction execution
23 facility registered under the Commodity Exchange
24 Act, or a board of trade (as defined in the Com-
25 modity Exchange Act) or in a resolution of the gov-
26 erning board thereof and a right,”.



1 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
2 OFFSET UNDER A MASTER NETTING AGREEMENT AND
3 ACROSS CONTRACTS.—

4 (1) IN GENERAL.—Title 11, United States
5 Code, is amended by inserting after section 560 the
6 following:

7 **“§ 561. Contractual right to terminate, liquidate, ac-**
8 **celerate, or offset under a master netting**
9 **agreement and across contracts; pro-**
10 **ceedings under chapter 15**

11 “(a) Subject to subsection (b), the exercise of any
12 contractual right, because of a condition of the kind speci-
13 fied in section 365(e)(1), to cause the termination, liquida-
14 tion, or acceleration of or to offset or net termination val-
15 ues, payment amounts, or other transfer obligations aris-
16 ing under or in connection with one or more (or the termi-
17 nation, liquidation, or acceleration of one or more)—

18 “(1) securities contracts, as defined in section
19 741(7);

20 “(2) commodity contracts, as defined in section
21 761(4);

22 “(3) forward contracts;

23 “(4) repurchase agreements;

24 “(5) swap agreements; or

25 “(6) master netting agreements,



1 shall not be stayed, avoided, or otherwise limited by oper-
2 ation of any provision of this title or by any order of a
3 court or administrative agency in any proceeding under
4 this title.

5 “(b)(1) A party may exercise a contractual right de-
6 scribed in subsection (a) to terminate, liquidate, or accel-
7 erate only to the extent that such party could exercise such
8 a right under section 555, 556, 559, or 560 for each indi-
9 vidual contract covered by the master netting agreement
10 in issue.

11 “(2) If a debtor is a commodity broker subject to sub-
12 chapter IV of chapter 7—

13 “(A) a party may not net or offset an obligation
14 to the debtor arising under, or in connection with,
15 a commodity contract traded on or subject to the
16 rules of a contract market designated under the
17 Commodity Exchange Act or a derivatives trans-
18 action execution facility registered under the Com-
19 modity Exchange Act against any claim arising
20 under, or in connection with, other instruments, con-
21 tracts, or agreements listed in subsection (a) except
22 to the extent that the party has positive net equity
23 in the commodity accounts at the debtor, as cal-
24 culated under such subchapter; and



1 “(B) another commodity broker may not net or
2 offset an obligation to the debtor arising under, or
3 in connection with, a commodity contract entered
4 into or held on behalf of a customer of the debtor
5 and traded on or subject to the rules of a contract
6 market designated under the Commodity Exchange
7 Act or a derivatives transaction execution facility
8 registered under the Commodity Exchange Act
9 against any claim arising under, or in connection
10 with, other instruments, contracts, or agreements
11 listed in subsection (a).

12 “(3) No provision of subparagraph (A) or (B) of
13 paragraph (2) shall prohibit the offset of claims and obli-
14 gations that arise under—

15 “(A) a cross-margining agreement or similar
16 arrangement that has been approved by the Com-
17 modity Futures Trading Commission or submitted
18 to the Commodity Futures Trading Commission
19 under paragraph (1) or (2) of section 5c(c) of the
20 Commodity Exchange Act and has not been abro-
21 gated or rendered ineffective by the Commodity Fu-
22 tures Trading Commission; or

23 “(B) any other netting agreement between a
24 clearing organization (as defined in section 761) and



1 another entity that has been approved by the Com-
2 modity Futures Trading Commission.

3 “(c) As used in this section, the term ‘contractual
4 right’ includes a right set forth in a rule or bylaw of a
5 derivatives clearing organization (as defined in the Com-
6 modity Exchange Act), a multilateral clearing organiza-
7 tion (as defined in the Federal Deposit Insurance Cor-
8 poration Improvement Act of 1991), a national securities
9 exchange, a national securities association, a securities
10 clearing agency, a contract market designated under the
11 Commodity Exchange Act, a derivatives transaction execu-
12 tion facility registered under the Commodity Exchange
13 Act, or a board of trade (as defined in the Commodity
14 Exchange Act) or in a resolution of the governing board
15 thereof, and a right, whether or not evidenced in writing,
16 arising under common law, under law merchant, or by rea-
17 son of normal business practice.

18 “(d) Any provisions of this title relating to securities
19 contracts, commodity contracts, forward contracts, repur-
20 chase agreements, swap agreements, or master netting
21 agreements shall apply in a case under chapter 15, so that
22 enforcement of contractual provisions of such contracts
23 and agreements in accordance with their terms will not
24 be stayed or otherwise limited by operation of any provi-
25 sion of this title or by order of a court in any case under



1 this title, and to limit avoidance powers to the same extent
2 as in a proceeding under chapter 7 or 11 of this title (such
3 enforcement not to be limited based on the presence or
4 absence of assets of the debtor in the United States).”.

5 (2) CONFORMING AMENDMENT.—The table of
6 sections for chapter 5 of title 11, United States
7 Code, is amended by inserting after the item relating
8 to section 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a
master netting agreement and across contracts; proceedings
under chapter 15.”.

9 (l) COMMODITY BROKER LIQUIDATIONS.—Title 11,
10 United States Code, is amended by inserting after section
11 766 the following:

12 **“§ 767. Commodity broker liquidation and forward**
13 **contract merchants, commodity brokers,**
14 **stockbrokers, financial institutions, fi-**
15 **nancial participants, securities clearing**
16 **agencies, swap participants, repo partici-**
17 **pants, and master netting agreement par-**
18 **ticipants**

19 “Notwithstanding any other provision of this title,
20 the exercise of rights by a forward contract merchant,
21 commodity broker, stockbroker, financial institution, fi-
22 nancial participant, securities clearing agency, swap par-
23 ticipant, repo participant, or master netting agreement
24 participant under this title shall not affect the priority of



1 any unsecured claim it may have after the exercise of such
2 rights.”.

3 (m) STOCKBROKER LIQUIDATIONS.—Title 11,
4 United States Code, is amended by inserting after section
5 752 the following:

6 **“§ 753. Stockbroker liquidation and forward contract**
7 **merchants, commodity brokers, stock-**
8 **brokers, financial institutions, financial**
9 **participants, securities clearing agencies,**
10 **swap participants, repo participants, and**
11 **master netting agreement participants**

12 “Notwithstanding any other provision of this title,
13 the exercise of rights by a forward contract merchant,
14 commodity broker, stockbroker, financial institution, fi-
15 nancial participant, securities clearing agency, swap par-
16 ticipant, repo participant, or master netting agreement
17 participant under this title shall not affect the priority of
18 any unsecured claim it may have after the exercise of such
19 rights.”.

20 (n) SETOFF.—Section 553 of title 11, United States
21 Code, is amended—

22 (1) in subsection (a)(2)(B)(ii), by inserting be-
23 fore the semicolon the following: “(except for a
24 setoff of a kind described in section 362(b)(6),



1 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559,
2 560, or 561”;

3 (2) in subsection (a)(3)(C), by inserting before
4 the period the following: “(except for a setoff of a
5 kind described in section 362(b)(6), 362(b)(7),
6 362(b)(17), 362(b)(27), 555, 556, 559, 560, or
7 561)”; and

8 (3) in subsection (b)(1), by striking
9 “362(b)(14),” and inserting “362(b)(17),
10 362(b)(27), 555, 556, 559, 560, 561,”.

11 (o) SECURITIES CONTRACTS, COMMODITY CON-
12 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
13 States Code, is amended—

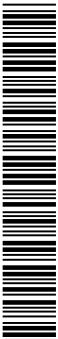
14 (1) in section 362(b)(6), by striking “financial
15 institutions,” each place such term appears and in-
16 serting “financial institution, financial participant,”;

17 (2) in sections 362(b)(7) and 546(f), by insert-
18 ing “or financial participant” after “repo partici-
19 pant” each place such term appears;

20 (3) in section 546(e), by inserting “financial
21 participant,” after “financial institution,”;

22 (4) in section 548(d)(2)(B), by inserting “fi-
23 nancial participant,” after “financial institution,”;

24 (5) in section 548(d)(2)(C), by inserting “or fi-
25 nancial participant” after “repo participant”;



1 (6) in section 548(d)(2)(D), by inserting “or fi-
2 nancial participant” after “swap participant”;

3 (7) in section 555—

4 (A) by inserting “financial participant,”
5 after “financial institution,”; and

6 (B) by striking the second sentence and in-
7 serting the following: “As used in this section,
8 the term ‘contractual right’ includes a right set
9 forth in a rule or bylaw of a derivatives clearing
10 organization (as defined in the Commodity Ex-
11 change Act), a multilateral clearing organiza-
12 tion (as defined in the Federal Deposit Insur-
13 ance Corporation Improvement Act of 1991), a
14 national securities exchange, a national securi-
15 ties association, a securities clearing agency, a
16 contract market designated under the Com-
17modity Exchange Act, a derivatives transaction
18 execution facility registered under the Com-
19modity Exchange Act, or a board of trade (as
20 defined in the Commodity Exchange Act), or in
21 a resolution of the governing board thereof, and
22 a right, whether or not in writing, arising under
23 common law, under law merchant, or by reason
24 of normal business practice.”;



1 (8) in section 556, by inserting “, financial par-
2 ticipant,” after “commodity broker”;

3 (9) in section 559, by inserting “or financial
4 participant” after “repo participant” each place
5 such term appears; and

6 (10) in section 560, by inserting “or financial
7 participant” after “swap participant”.

8 (p) CONFORMING AMENDMENTS.—Title 11, United
9 States Code, is amended—

10 (1) in the table of sections for chapter 5—

11 (A) by amending the items relating to sec-
12 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-
tract or forward contract.”;

13 and

14 (B) by amending the items relating to sec-
15 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase
agreement.

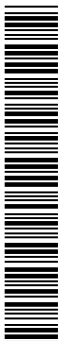
“560. Contractual right to liquidate, terminate, or accelerate a swap agree-
ment.”;

16 and

17 (2) in the table of sections for chapter 7—

18 (A) by inserting after the item relating to
19 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-
modity brokers, stockbrokers, financial institutions, financial
participants, securities clearing agencies, swap participants,
repo participants, and master netting agreement participants.”;



1 and

2 (B) by inserting after the item relating to
3 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

4 **SEC. 808. RECORDKEEPING REQUIREMENTS.**

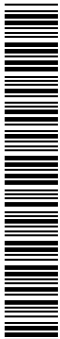
5 Section 11(e)(8) of the Federal Deposit Insurance
6 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
7 end the following new subparagraph:

8 “(H) RECORDKEEPING REQUIREMENTS.—

9 The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).”.

18 **SEC. 809. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.**

20 Section 13(e)(2) of the Federal Deposit Insurance
21 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:



1 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
2 EXECUTION REQUIREMENT.—An agreement to pro-
3 vide for the lawful collateralization of—

4 “(A) deposits of, or other credit extension
5 by, a Federal, State, or local governmental enti-
6 ty, or of any depositor referred to in section
7 11(a)(2), including an agreement to provide col-
8 lateral in lieu of a surety bond;

9 “(B) bankruptcy estate funds pursuant to
10 section 345(b)(2) of title 11, United States
11 Code;

12 “(C) extensions of credit, including any
13 overdraft, from a Federal reserve bank or Fed-
14 eral home loan bank; or

15 “(D) one or more qualified financial con-
16 tracts, as defined in section 11(e)(8)(D),
17 shall not be deemed invalid pursuant to paragraph
18 (1)(B) solely because such agreement was not exe-
19 cuted contemporaneously with the acquisition of the
20 collateral or because of pledges, delivery, or substi-
21 tution of the collateral made in accordance with such
22 agreement.”.

23 **SEC. 810. DAMAGE MEASURE.**

24 (a) IN GENERAL.—Title 11, United States Code, is
25 amended—



1 (1) by inserting after section 561, as added by
2 section 907, the following:

3 **“§ 562. Timing of damage measurement in connection**
4 **with swap agreements, securities con-**
5 **tracts, forward contracts, commodity con-**
6 **tracts, repurchase agreements, and mas-**
7 **ter netting agreements**

8 “(a) If the trustee rejects a swap agreement, securi-
9 ties contract (as defined in section 741), forward contract,
10 commodity contract (as defined in section 761), repur-
11 chase agreement, or master netting agreement pursuant
12 to section 365(a), or if a forward contract merchant,
13 stockbroker, financial institution, securities clearing agen-
14 cy, repo participant, financial participant, master netting
15 agreement participant, or swap participant liquidates, ter-
16 minates, or accelerates such contract or agreement, dam-
17 ages shall be measured as of the earlier of—

18 “(1) the date of such rejection; or

19 “(2) the date or dates of such liquidation, ter-
20 mination, or acceleration.

21 “(b) If there are not any commercially reasonable de-
22 terminants of value as of any date referred to in para-
23 graph (1) or (2) of subsection (a), damages shall be meas-
24 ured as of the earliest subsequent date or dates on which
25 there are commercially reasonable determinants of value.



1 “(c) For the purposes of subsection (b), if damages
2 are not measured as of the date or dates of rejection, liq-
3 uidation, termination, or acceleration, and the forward
4 contract merchant, stockbroker, financial institution, secu-
5 rities clearing agency, repo participant, financial partici-
6 pant, master netting agreement participant, or swap par-
7 ticipant or the trustee objects to the timing of the meas-
8 urement of damages—

9 “(1) the trustee, in the case of an objection by
10 a forward contract merchant, stockbroker, financial
11 institution, securities clearing agency, repo partici-
12 pant, financial participant, master netting agree-
13 ment participant, or swap participant; or

14 “(2) the forward contract merchant, stock-
15 broker, financial institution, securities clearing agen-
16 cy, repo participant, financial participant, master
17 netting agreement participant, or swap participant,
18 in the case of an objection by the trustee,

19 has the burden of proving that there were no commercially
20 reasonable determinants of value as of such date or
21 dates.”; and

22 (2) in the table of sections for chapter 5, by in-
23 serting after the item relating to section 561 (as
24 added by section 907) the following new item:

“562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.”.



1 (b) CLAIMS ARISING FROM REJECTION.—Section
2 502(g) of title 11, United States Code, is amended—

3 (1) by inserting “(1)” after “(g)”; and

4 (2) by adding at the end the following:

5 “(2) A claim for damages calculated in accordance
6 with section 562 shall be allowed under subsection (a), (b),
7 or (c), or disallowed under subsection (d) or (e), as if such
8 claim had arisen before the date of the filing of the peti-
9 tion.”.

10 **SEC. 811. SIPC STAY.**

11 Section 5(b)(2) of the Securities Investor Protection
12 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding
13 at the end the following new subparagraph:

14 “(C) EXCEPTION FROM STAY.—

15 “(i) Notwithstanding section 362 of
16 title 11, United States Code, neither the
17 filing of an application under subsection
18 (a)(3) nor any order or decree obtained by
19 SIPC from the court shall operate as a
20 stay of any contractual rights of a creditor
21 to liquidate, terminate, or accelerate a se-
22 curities contract, commodity contract, for-
23 ward contract, repurchase agreement, swap
24 agreement, or master netting agreement,
25 as those terms are defined in sections 101,



1 741, and 761 of title 11, United States
2 Code, to offset or net termination values,
3 payment amounts, or other transfer obliga-
4 tions arising under or in connection with
5 one or more of such contracts or agree-
6 ments, or to foreclose on any cash collat-
7 eral pledged by the debtor, whether or not
8 with respect to one or more of such con-
9 tracts or agreements.

10 “(ii) Notwithstanding clause (i), such
11 application, order, or decree may operate
12 as a stay of the foreclosure on, or disposi-
13 tion of, securities collateral pledged by the
14 debtor, whether or not with respect to one
15 or more of such contracts or agreements,
16 securities sold by the debtor under a repur-
17 chase agreement, or securities lent under a
18 securities lending agreement.

19 “(iii) As used in this subparagraph,
20 the term ‘contractual right’ includes a
21 right set forth in a rule or bylaw of a na-
22 tional securities exchange, a national secu-
23 rities association, or a securities clearing
24 agency, a right set forth in a bylaw of a
25 clearing organization or contract market or



1 in a resolution of the governing board
2 thereof, and a right, whether or not in
3 writing, arising under common law, under
4 law merchant, or by reason of normal busi-
5 ness practice.”.

6 **TITLE IX—PROTECTION OF FAM-**
7 **ILY FARMERS AND FAMILY**
8 **FISHERMEN**

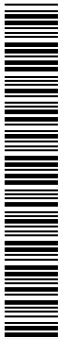
9 **SEC. 901. PERMANENT REENACTMENT OF CHAPTER 12.**

10 (a) REENACTMENT.—

11 (1) IN GENERAL.—Chapter 12 of title 11,
12 United States Code, as reenacted by section 149 of
13 division C of the Omnibus Consolidated and Emer-
14 gency Supplemental Appropriations Act, 1999 (Pub-
15 lic Law 105–277), is hereby reenacted, and as here
16 reenacted is amended by this Act.

17 (2) EFFECTIVE DATE.—Subsection (a) shall
18 take effect on the date of the enactment of this Act.

19 (b) CONFORMING AMENDMENT.—Section 302 of the
20 Bankruptcy Judges, United States Trustees, and Family
21 Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is
22 amended by striking subsection (f).



1 **SEC. 902. DEBT LIMIT INCREASE.**

2 Section 104(b) of title 11, United States Code, as
3 amended by section 226, is amended by inserting
4 “101(18),” after “101(3),” each place it appears.

5 **SEC. 903. CERTAIN CLAIMS OWED TO GOVERNMENTAL**
6 **UNITS.**

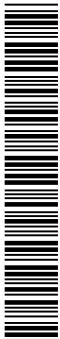
7 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title
8 11, United States Code, as amended by section 213, is
9 amended to read as follows:

10 “(2) provide for the full payment, in deferred
11 cash payments, of all claims entitled to priority
12 under section 507, unless—

13 “(A) the claim is a claim owed to a govern-
14 mental unit that arises as a result of the sale,
15 transfer, exchange, or other disposition of any
16 farm asset used in the debtor’s farming oper-
17 ation, in which case the claim shall be treated
18 as an unsecured claim that is not entitled to
19 priority under section 507, but the debt shall be
20 treated in such manner only if the debtor re-
21 ceives a discharge; or

22 “(B) the holder of a particular claim
23 agrees to a different treatment of that claim;”.

24 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)
25 of title 11, United States Code, as so designated by section



1 719, is amended by striking “a State or local govern-
2 mental unit” and inserting “any governmental unit”.

3 (c) EFFECTIVE DATE; APPLICATION OF AMEND-
4 MENTS.—This section and the amendments made by this
5 section shall take effect on the date of the enactment of
6 this Act and shall not apply with respect to cases com-
7 menced under title 11 of the United States Code before
8 such date.

9 **SEC. 904. DEFINITION OF FAMILY FARMER.**

10 Section 101(18) of title 11, United States Code, is
11 amended—

12 (1) in subparagraph (A)—

13 (A) by striking “\$1,500,000” and inserting
14 “\$3,237,000”; and

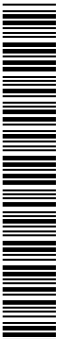
15 (B) by striking “80” and inserting “50”;

16 and

17 (2) in subparagraph (B)(ii)—

18 (A) by striking “\$1,500,000” and inserting
19 “\$3,237,000”; and

20 (B) by striking “80” and inserting “50”.



1 **SEC. 905. ELIMINATION OF REQUIREMENT THAT FAMILY**
2 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**
3 **CENT OF INCOME FROM FARMING OPER-**
4 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

5 Section 101(18)(A) of title 11, United States Code,
6 is amended by striking “for the taxable year preceding the
7 taxable year” and inserting the following:

8 “for—
9 “(i) the taxable year preceding; or
10 “(ii) each of the 2d and 3d taxable
11 years preceding;
12 the taxable year”.

13 **SEC. 906. PROHIBITION OF RETROACTIVE ASSESSMENT OF**
14 **DISPOSABLE INCOME.**

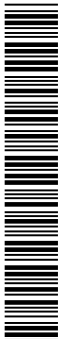
15 (a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of
16 title 11, United States Code, is amended—

17 (1) in subparagraph (A) by striking “or” at the
18 end;

19 (2) in subparagraph (B) by striking the period
20 at the end and inserting “; or”; and

21 (3) by adding at the end the following:

22 “(C) the value of the property to be distributed
23 under the plan in the 3-year period, or such longer
24 period as the court may approve under section
25 1222(c), beginning on the date that the first dis-
26 tribution is due under the plan is not less than the



1 debtor's projected disposable income for such pe-
2 riod.”.

3 (b) MODIFICATION OF PLAN.—Section 1229 of title
4 11, United States Code, is amended by adding at the end
5 the following:

6 “(d) A plan may not be modified under this section—

7 “(1) to increase the amount of any payment
8 due before the plan as modified becomes the plan;

9 “(2) by anyone except the debtor, based on an
10 increase in the debtor's disposable income, to in-
11 crease the amount of payments to unsecured credi-
12 tors required for a particular month so that the ag-
13 gregate of such payments exceeds the debtor's dis-
14 posable income for such month; or

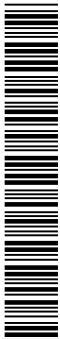
15 “(3) in the last year of the plan by anyone ex-
16 cept the debtor, to require payments that would
17 leave the debtor with insufficient funds to carry on
18 the farming operation after the plan is completed.”.

19 **SEC. 907. FAMILY FISHERMEN.**

20 (a) DEFINITIONS.—Section 101 of title 11, United
21 States Code, is amended—

22 (1) by inserting after paragraph (7) the fol-
23 lowing:

24 “(7A) ‘commercial fishing operation’ means—



1 “(A) the catching or harvesting of fish,
2 shrimp, lobsters, urchins, seaweed, shellfish, or
3 other aquatic species or products of such spe-
4 cies; or

5 “(B) for purposes of section 109 and chap-
6 ter 12, aquaculture activities consisting of rais-
7 ing for market any species or product described
8 in subparagraph (A);

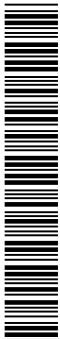
9 “(7B) ‘commercial fishing vessel’ means a ves-
10 sel used by a family fisherman to carry out a com-
11 mercial fishing operation;”; and

12 (2) by inserting after paragraph (19) the fol-
13 lowing:

14 “(19A) ‘family fisherman’ means—

15 “(A) an individual or individual and spouse
16 engaged in a commercial fishing operation—

17 “(i) whose aggregate debts do not ex-
18 ceed \$1,500,000 and not less than 80 per-
19 cent of whose aggregate noncontingent, liq-
20 uidated debts (excluding a debt for the
21 principal residence of such individual or
22 such individual and spouse, unless such
23 debt arises out of a commercial fishing op-
24 eration), on the date the case is filed, arise
25 out of a commercial fishing operation



1 owned or operated by such individual or
2 such individual and spouse; and

3 “(ii) who receive from such commer-
4 cial fishing operation more than 50 percent
5 of such individual’s or such individual’s
6 and spouse’s gross income for the taxable
7 year preceding the taxable year in which
8 the case concerning such individual or such
9 individual and spouse was filed; or

10 “(B) a corporation or partnership—

11 “(i) in which more than 50 percent of
12 the outstanding stock or equity is held
13 by—

14 “(I) 1 family that conducts the
15 commercial fishing operation; or

16 “(II) 1 family and the relatives
17 of the members of such family, and
18 such family or such relatives conduct
19 the commercial fishing operation; and

20 “(ii)(I) more than 80 percent of the
21 value of its assets consists of assets related
22 to the commercial fishing operation;

23 “(II) its aggregate debts do not ex-
24 ceed \$1,500,000 and not less than 80 per-
25 cent of its aggregate noncontingent, liq-



1 uidated debts (excluding a debt for 1
2 dwelling which is owned by such corpora-
3 tion or partnership and which a share-
4 holder or partner maintains as a principal
5 residence, unless such debt arises out of a
6 commercial fishing operation), on the date
7 the case is filed, arise out of a commercial
8 fishing operation owned or operated by
9 such corporation or such partnership; and

10 “(III) if such corporation issues stock,
11 such stock is not publicly traded;

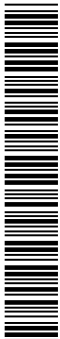
12 “(19B) ‘family fisherman with regular annual
13 income’ means a family fisherman whose annual in-
14 come is sufficiently stable and regular to enable such
15 family fisherman to make payments under a plan
16 under chapter 12 of this title;”.

17 (b) WHO MAY BE A DEBTOR.—Section 109(f) of title
18 11, United States Code, is amended by inserting “or fam-
19 ily fisherman” after “family farmer”.

20 (c) CHAPTER 12.—Chapter 12 of title 11, United
21 States Code, is amended—

22 (1) in the chapter heading, by inserting “**OR**
23 **FISHERMAN**” after “**FAMILY FARMER**”;

24 (2) in section 1203, by inserting “or commer-
25 cial fishing operation” after “farm”; and



1 (3) in section 1206, by striking “if the property
2 is farmland or farm equipment” and inserting “if
3 the property is farmland, farm equipment, or prop-
4 erty used to carry out a commercial fishing oper-
5 ation (including a commercial fishing vessel)”.

6 (d) CLERICAL AMENDMENT.—In the table of chap-
7 ters for title 11, United States Code, the item relating to
8 chapter 12, is amended to read as follows:

**“12. Adjustments of Debts of a Family Farmer or Family
Fisherman with Regular Annual Income 1201”.**

9 (e) APPLICABILITY.—Nothing in this section shall
10 change, affect, or amend the Fishery Conservation and
11 Management Act of 1976 (16 U.S.C. 1801, et seq.).

12 **TITLE X—HEALTH CARE AND**
13 **EMPLOYEE BENEFITS**

14 **SEC. 1001. DEFINITIONS.**

15 (a) HEALTH CARE BUSINESS DEFINED.—Section
16 101 of title 11, United States Code, as amended by section
17 306, is amended—

18 (1) by redesignating paragraph (27A) as para-
19 graph (27B); and

20 (2) by inserting after paragraph (27) the fol-
21 lowing:

22 “(27A) ‘health care business’—

23 “(A) means any public or private entity
24 (without regard to whether that entity is orga-



1 nized for profit or not for profit) that is pri-
2 marily engaged in offering to the general public
3 facilities and services for—

4 “(i) the diagnosis or treatment of in-
5 jury, deformity, or disease; and

6 “(ii) surgical, drug treatment, psy-
7 chiatric, or obstetric care; and

8 “(B) includes—

9 “(i) any—

10 “(I) general or specialized hos-
11 pital;

12 “(II) ancillary ambulatory, emer-
13 gency, or surgical treatment facility;

14 “(III) hospice;

15 “(IV) home health agency; and

16 “(V) other health care institution
17 that is similar to an entity referred to
18 in subclause (I), (II), (III), or (IV);
19 and

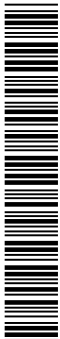
20 “(ii) any long-term care facility, in-
21 cluding any—

22 “(I) skilled nursing facility;

23 “(II) intermediate care facility;

24 “(III) assisted living facility;

25 “(IV) home for the aged;



1 “(V) domiciliary care facility; and
2 “(VI) health care institution that
3 is related to a facility referred to in
4 subclause (I), (II), (III), (IV), or (V),
5 if that institution is primarily engaged
6 in offering room, board, laundry, or
7 personal assistance with activities of
8 daily living and incidentals to activi-
9 ties of daily living;”.

10 (b) PATIENT AND PATIENT RECORDS DEFINED.—
11 Section 101 of title 11, United States Code, is amended
12 by inserting after paragraph (40) the following:

13 “(40A) ‘patient’ means any individual who ob-
14 tains or receives services from a health care busi-
15 ness;

16 “(40B) ‘patient records’ means any written doc-
17 ument relating to a patient or a record recorded in
18 a magnetic, optical, or other form of electronic me-
19 dium;”.

20 (c) RULE OF CONSTRUCTION.—The amendments
21 made by subsection (a) of this section shall not affect the
22 interpretation of section 109(b) of title 11, United States
23 Code.



1 **SEC. 1002. DISPOSAL OF PATIENT RECORDS.**

2 (a) IN GENERAL.—Subchapter III of chapter 3 of
3 title 11, United States Code, is amended by adding at the
4 end the following:

5 **“§ 351. Disposal of patient records**

6 “If a health care business commences a case under
7 chapter 7, 9, or 11, and the trustee does not have a suffi-
8 cient amount of funds to pay for the storage of patient
9 records in the manner required under applicable Federal
10 or State law, the following requirements shall apply:

11 “(1) The trustee shall—

12 “(A) promptly publish notice, in 1 or more
13 appropriate newspapers, that if patient records
14 are not claimed by the patient or an insurance
15 provider (if applicable law permits the insur-
16 ance provider to make that claim) by the date
17 that is 365 days after the date of that notifica-
18 tion, the trustee will destroy the patient
19 records; and

20 “(B) during the first 180 days of the 365-
21 day period described in subparagraph (A),
22 promptly attempt to notify directly each patient
23 that is the subject of the patient records and
24 appropriate insurance carrier concerning the
25 patient records by mailing to the most recent
26 known address of that patient, or a family



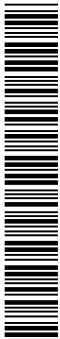
1 member or contact person for that patient, and
2 to the appropriate insurance carrier an appro-
3 priate notice regarding the claiming or dis-
4 posing of patient records.

5 “(2) If, after providing the notification under
6 paragraph (1), patient records are not claimed dur-
7 ing the 365-day period described under that para-
8 graph, the trustee shall mail, by certified mail, at
9 the end of such 365-day period a written request to
10 each appropriate Federal agency to request permis-
11 sion from that agency to deposit the patient records
12 with that agency, except that no Federal agency is
13 required to accept patient records under this para-
14 graph.

15 “(3) If, following the 365-day period described
16 in paragraph (2) and after providing the notification
17 under paragraph (1), patient records are not claimed
18 by a patient or insurance provider, or request is not
19 granted by a Federal agency to deposit such records
20 with that agency, the trustee shall destroy those
21 records by—

22 “(A) if the records are written, shredding
23 or burning the records; or

24 “(B) if the records are magnetic, optical,
25 or other electronic records, by otherwise de-



1 stroying those records so that those records
2 cannot be retrieved.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for subchapter III of chapter 3 of title 11, United States
5 Code, is amended by adding at the end the following:

“351. Disposal of patient records.”.

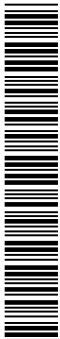
6 **SEC. 1003. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS**
7 **OF CLOSING A HEALTH CARE BUSINESS AND**
8 **OTHER ADMINISTRATIVE EXPENSES.**

9 Section 503(b) of title 11, United States Code, as
10 amended by section 445, is amended by adding at the end
11 the following:

12 “(8) the actual, necessary costs and expenses of
13 closing a health care business incurred by a trustee
14 or by a Federal agency (as defined in section 551(1)
15 of title 5) or a department or agency of a State or
16 political subdivision thereof, including any cost or
17 expense incurred—

18 “(A) in disposing of patient records in ac-
19 cordance with section 351; or

20 “(B) in connection with transferring pa-
21 tients from the health care business that is in
22 the process of being closed to another health
23 care business; and”.



1 **SEC. 1004. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**
2 **TIENT ADVOCATE.**

3 (a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

4 (1) APPOINTMENT OF OMBUDSMAN.—Title 11,
5 United States Code, as amended by section 232, is
6 amended by inserting after section 332 the fol-
7 lowing:

8 **“§ 333. Appointment of patient care ombudsman**

9 “(a)(1) If the debtor in a case under chapter 7, 9,
10 or 11 is a health care business, the court shall order, not
11 later than 30 days after the commencement of the case,
12 the appointment of an ombudsman to monitor the quality
13 of patient care and to represent the interests of the pa-
14 tients of the health care business unless the court finds
15 that the appointment of such ombudsman is not necessary
16 for the protection of patients under the specific facts of
17 the case.

18 “(2)(A) If the court orders the appointment of an
19 ombudsman under paragraph (1), the United States trust-
20 ee shall appoint 1 disinterested person (other than the
21 United States trustee) to serve as such ombudsman.

22 “(B) If the debtor is a health care business that pro-
23 vides long-term care, then the United States trustee may
24 appoint the State Long-Term Care Ombudsman appointed
25 under the Older Americans Act of 1965 for the State in



1 which the case is pending to serve as the ombudsman re-
2 quired by paragraph (1).

3 “(C) If the United States trustee does not appoint
4 a State Long-Term Care Ombudsman under subpara-
5 graph (B), the court shall notify the State Long-Term
6 Care Ombudsman appointed under the Older Americans
7 Act of 1965 for the State in which the case is pending,
8 of the name and address of the person who is appointed
9 under subparagraph (A).

10 “(b) An ombudsman appointed under subsection (a)
11 shall—

12 “(1) monitor the quality of patient care pro-
13 vided to patients of the debtor, to the extent nec-
14 essary under the circumstances, including inter-
15 viewing patients and physicians;

16 “(2) not later than 60 days after the date of
17 appointment, and not less frequently than at 60-day
18 intervals thereafter, report to the court after notice
19 to the parties in interest, at a hearing or in writing,
20 regarding the quality of patient care provided to pa-
21 tients of the debtor; and

22 “(3) if such ombudsman determines that the
23 quality of patient care provided to patients of the
24 debtor is declining significantly or is otherwise being
25 materially compromised, file with the court a motion



1 or a written report, with notice to the parties in in-
2 terest immediately upon making such determination.

3 “(c)(1) An ombudsman appointed under subsection
4 (a) shall maintain any information obtained by such om-
5 budsman under this section that relates to patients (in-
6 cluding information relating to patient records) as con-
7 fidential information. Such ombudsman may not review
8 confidential patient records unless the court approves such
9 review in advance and imposes restrictions on such om-
10 budsman to protect the confidentiality of such records.

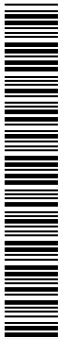
11 “(2) An ombudsman appointed under subsection
12 (a)(2)(B) shall have access to patient records consistent
13 with authority of such ombudsman under the Older Amer-
14 icans Act of 1965 and under non-Federal laws governing
15 the State Long-Term Care Ombudsman program.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for subchapter II of chapter 3 of title 11,
18 United States Code, as amended by section 232, is
19 amended by adding at the end the following:

“333. Appointment of ombudsman.”.

20 (b) COMPENSATION OF OMBUDSMAN.—Section
21 330(a)(1) of title 11, United States Code, is amended—

22 (1) in the matter preceding subparagraph (A),
23 by inserting “an ombudsman appointed under sec-
24 tion 333, or” before “a professional person”; and



1 (2) in subparagraph (A), by inserting “ombuds-
2 man,” before “professional person”.

3 **SEC. 1005. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**
4 **TRANSFER PATIENTS.**

5 (a) IN GENERAL.—Section 704(a) of title 11, United
6 States Code, as amended by sections 102, 219, and 446,
7 is amended by adding at the end the following:

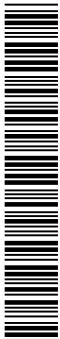
8 “(12) use all reasonable and best efforts to
9 transfer patients from a health care business that is
10 in the process of being closed to an appropriate
11 health care business that—

12 “(A) is in the vicinity of the health care
13 business that is closing;

14 “(B) provides the patient with services
15 that are substantially similar to those provided
16 by the health care business that is in the proc-
17 ess of being closed; and

18 “(C) maintains a reasonable quality of
19 care.”.

20 (b) CONFORMING AMENDMENT.—Section 1106(a)(1)
21 of title 11, United States Code, as amended by section
22 446, is amended by striking “and (11)” and inserting
23 “(11), and (12)”.



1 **SEC. 1006. EXCLUSION FROM PROGRAM PARTICIPATION**
2 **NOT SUBJECT TO AUTOMATIC STAY.**

3 Section 362(b) of title 11, United States Code, is
4 amended by inserting after paragraph (27), as amended
5 by sections 224, 303, 311, 401, 718, and 907, the fol-
6 lowing:

7 “(28) under subsection (a), of the exclusion by
8 the Secretary of Health and Human Services of the
9 debtor from participation in the medicare program
10 or any other Federal health care program (as de-
11 fined in section 1128B(f) of the Social Security Act
12 pursuant to title XI or XVIII of such Act).”.

13 **TITLE XI—TECHNICAL**
14 **AMENDMENTS**

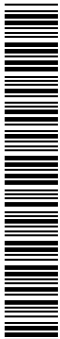
15 **SEC. 1101. DEFINITIONS.**

16 Section 101 of title 11, United States Code, as here-
17 inbefore amended by this Act, is amended—

18 (1) by striking “In this title—” and inserting
19 “In this title the following definitions shall apply:”;

20 (2) in each paragraph, by inserting “The term”
21 after the paragraph designation;

22 (3) in paragraph (35)(B), by striking “para-
23 graphs (21B) and (33)(A)” and inserting “para-
24 graphs (23) and (35)”;



1 (4) in each of paragraphs (35A), (38), and
2 (54A), by striking “; and” at the end and inserting
3 a period;

4 (5) in paragraph (51B) by inserting “who is
5 not a family farmer” after “debtor” the first place
6 it appears; and

7 (6) by striking paragraph (54) and inserting
8 the following:

9 “(54) The term ‘transfer’ means—

10 “(A) the creation of a lien;

11 “(B) the retention of title as a security in-
12 terest;

13 “(C) the foreclosure of a debtor’s equity of
14 redemption; or

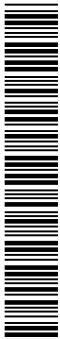
15 “(D) each mode, direct or indirect, abso-
16 lute or conditional, voluntary or involuntary, of
17 disposing of or parting with—

18 “(i) property; or

19 “(ii) an interest in property;”;

20 (7) by indenting the left margin of paragraph
21 (54A) 2 ems to the right; and

22 (8) in each of paragraphs (1) through (35), in
23 each of paragraphs (36), (37), (38A), (38B) and
24 (39A), and in each of paragraphs (40) through (55),



1 by striking the semicolon at the end and inserting a
2 period.

3 **SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.**

4 Section 104 of title 11, United States Code, is
5 amended by inserting “522(f)(3),” after “522(d),” each
6 place it appears.

7 **SEC. 1103. EXTENSION OF TIME.**

8 Section 108(c)(2) of title 11, United States Code, is
9 amended by striking “922” and all that follows through
10 “or”, and inserting “922, 1201, or”.

11 **SEC. 1104. TECHNICAL AMENDMENTS.**

12 Title 11, United States Code, is amended—

13 (1) in section 109(b)(2), by striking “subsection
14 (c) or (d) of”; and

15 (2) in section 552(b)(1), by striking “product”
16 each place it appears and inserting “products”.

17 **SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**
18 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**
19 **TITIONS.**

20 Section 110(j)(4) of title 11, United States Code, as
21 so redesignated by section 221, is amended by striking
22 “attorney’s” and inserting “attorneys’”.



1 **SEC. 1106. LIMITATION ON COMPENSATION OF PROFES-**
2 **SIONAL PERSONS.**

3 Section 328(a) of title 11, United States Code, is
4 amended by inserting “on a fixed or percentage fee basis,”
5 after “hourly basis,”.

6 **SEC. 1107. EFFECT OF CONVERSION.**

7 Section 348(f)(2) of title 11, United States Code, is
8 amended by inserting “of the estate” after “property” the
9 first place it appears.

10 **SEC. 1108. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

11 Section 503(b)(4) of title 11, United States Code, is
12 amended by inserting “subparagraph (A), (B), (C), (D),
13 or (E) of” before “paragraph (3)”.

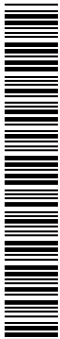
14 **SEC. 1109. EXCEPTIONS TO DISCHARGE.**

15 Section 523 of title 11, United States Code, as
16 amended by sections 215 and 314, is amended—

17 (1) by transferring paragraph (15), as added by
18 section 304(e) of Public Law 103–394 (108 Stat.
19 4133), so as to insert such paragraph after sub-
20 section (a)(14A);

21 (2) in subsection (a)(9), by striking “motor ve-
22 hicle” and inserting “motor vehicle, vessel, or air-
23 craft”; and

24 (3) in subsection (e), by striking “a insured”
25 and inserting “an insured”.



1 **SEC. 1110. EFFECT OF DISCHARGE.**

2 Section 524(a)(3) of title 11, United States Code, is
3 amended by striking “section 523” and all that follows
4 through “or that” and inserting “section 523, 1228(a)(1),
5 or 1328(a)(1), or that”.

6 **SEC. 1111. PROTECTION AGAINST DISCRIMINATORY TREAT-**
7 **MENT.**

8 Section 525(c) of title 11, United States Code, is
9 amended—

10 (1) in paragraph (1), by inserting “student” be-
11 fore “grant” the second place it appears; and

12 (2) in paragraph (2), by striking “the program
13 operated under part B, D, or E of” and inserting
14 “any program operated under”.

15 **SEC. 1112. PROPERTY OF THE ESTATE.**

16 Section 541(b)(4)(B)(ii) of title 11, United States
17 Code, is amended by inserting “365 or” before “542”.

18 **SEC. 1113. PREFERENCES.**

19 (a) IN GENERAL.—Section 547 of title 11, United
20 States Code, as amended by section 201, is amended—

21 (1) in subsection (b), by striking “subsection
22 (c)” and inserting “subsections (c) and (i)”; and

23 (2) by adding at the end the following:

24 “(i) If the trustee avoids under subsection (b) a
25 transfer made between 90 days and 1 year before the date
26 of the filing of the petition, by the debtor to an entity



1 that is not an insider for the benefit of a creditor that
2 is an insider, such transfer shall be considered to be avoid-
3 ed under this section only with respect to the creditor that
4 is an insider.”.

5 (b) APPLICABILITY.—The amendments made by this
6 section shall apply to any case that is pending or com-
7 menced on or after the date of enactment of this Act.

8 **SEC. 1114. POSTPETITION TRANSACTIONS.**

9 Section 549(c) of title 11, United States Code, is
10 amended—

11 (1) by inserting “an interest in” after “transfer
12 of” each place it appears;

13 (2) by striking “such property” and inserting
14 “such real property”; and

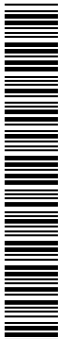
15 (3) by striking “the interest” and inserting
16 “such interest”.

17 **SEC. 1115. DISPOSITION OF PROPERTY OF THE ESTATE.**

18 Section 726(b) of title 11, United States Code, is
19 amended by striking “1009,”.

20 **SEC. 1116. GENERAL PROVISIONS.**

21 Section 901(a) of title 11, United States Code, is
22 amended by inserting “1123(d),” after “1123(b),”.



1 **SEC. 1117. ABANDONMENT OF RAILROAD LINE.**

2 Section 1170(e)(1) of title 11, United States Code,
3 is amended by striking “section 11347” and inserting
4 “section 11326(a)”.

5 **SEC. 1118. CONTENTS OF PLAN.**

6 Section 1172(c)(1) of title 11, United States Code,
7 is amended by striking “section 11347” and inserting
8 “section 11326(a)”.

9 **SEC. 1119. BANKRUPTCY CASES AND PROCEEDINGS.**

10 Section 1334(d) of title 28, United States Code, is
11 amended—

12 (1) by striking “made under this subsection”
13 and inserting “made under subsection (c)”; and

14 (2) by striking “This subsection” and inserting
15 “Subsection (c) and this subsection”.

16 **SEC. 1120. KNOWING DISREGARD OF BANKRUPTCY LAW OR**
17 **RULE.**

18 Section 156(a) of title 18, United States Code, is
19 amended—

20 (1) in the first undesignated paragraph—

21 (A) by inserting “(1) the term” before
22 “bankruptcy”; and

23 (B) by striking the period at the end and
24 inserting “; and”; and

25 (2) in the second undesignated paragraph—



1 (A) by inserting “(2) the term” before
2 “‘document’; and

3 (B) by striking “this title” and inserting
4 “title 11”.

5 **SEC. 1121. TRANSFERS MADE BY NONPROFIT CHARITABLE**
6 **CORPORATIONS.**

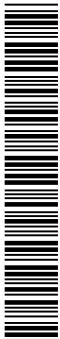
7 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)
8 of title 11, United States Code, is amended by striking
9 “only” and all that follows through the end of the sub-
10 section and inserting “only—

11 “(1) in accordance with applicable nonbank-
12 ruptcy law that governs the transfer of property by
13 a corporation or trust that is not a moneyed, busi-
14 ness, or commercial corporation or trust; and

15 “(2) to the extent not inconsistent with any re-
16 lief granted under subsection (c), (d), (e), or (f) of
17 section 362.”.

18 (b) CONFIRMATION OF PLAN OF REORGANIZA-
19 TION.—Section 1129(a) of title 11, United States Code,
20 as amended by sections 213 and 321, is amended by add-
21 ing at the end the following:

22 “(16) All transfers of property of the plan shall
23 be made in accordance with any applicable provi-
24 sions of nonbankruptcy law that govern the transfer
25 of property by a corporation or trust that is not a



1 moneyed, business, or commercial corporation or
2 trust.”.

3 (c) TRANSFER OF PROPERTY.—Section 541 of title
4 11, United States Code, as amended by section 225, is
5 amended by adding at the end the following:

6 “(f) Notwithstanding any other provision of this title,
7 property that is held by a debtor that is a corporation de-
8 scribed in section 501(c)(3) of the Internal Revenue Code
9 of 1986 and exempt from tax under section 501(a) of such
10 Code may be transferred to an entity that is not such a
11 corporation, but only under the same conditions as would
12 apply if the debtor had not filed a case under this title.”.

13 (d) APPLICABILITY.—The amendments made by this
14 section shall apply to a case pending under title 11, United
15 States Code, on the date of enactment of this Act, or filed
16 under that title on or after that date of enactment, except
17 that the court shall not confirm a plan under chapter 11
18 of title 11, United States Code, without considering
19 whether this section would substantially affect the rights
20 of a party in interest who first acquired rights with respect
21 to the debtor after the date of the filing of the petition.
22 The parties who may appear and be heard in a proceeding
23 under this section include the attorney general of the State
24 in which the debtor is incorporated, was formed, or does
25 business.



1 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to require the court in which a
3 case under chapter 11 of title 11, United States Code, is
4 pending to remand or refer any proceeding, issue, or con-
5 troversy to any other court or to require the approval of
6 any other court for the transfer of property.

7 **SEC. 1122. AUTHORIZATION FOR ADDITIONAL BANK-**
8 **RUPTCY JUDGSHIPS.**

9 The following judgeships positions shall be filled in
10 the manner prescribed in section 152(a)(1) of title 28,
11 United States Code, for the appointment of bankruptcy
12 judges provided for in section 152(a)(2) of such title:

13 (1) Two additional bankruptcy judgeships for
14 the southern district of New York.

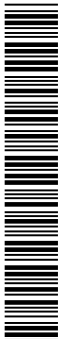
15 (2) Four additional bankruptcy judgeships for
16 the district of Delaware.

17 (3) One additional bankruptcy judgeship for the
18 district of New Jersey.

19 (4) One additional bankruptcy judgeship for the
20 eastern district of Pennsylvania.

21 (5) Three additional bankruptcy judgeships for
22 the district of Maryland.

23 (6) One additional bankruptcy judgeship for the
24 eastern district of North Carolina.



1 (7) One additional bankruptcy judgeship for the
2 district of South Carolina.

3 (8) One additional bankruptcy judgeship for the
4 eastern district of Virginia.

5 (9) Two additional bankruptcy judgeships for
6 the eastern district of Michigan.

7 (10) Two additional bankruptcy judgeships for
8 the western district of Tennessee.

9 (11) One additional bankruptcy judgeship for
10 the eastern and western districts of Arkansas.

11 (12) Two additional bankruptcy judgeships for
12 the district of Nevada.

13 (13) One additional bankruptcy judgeship for
14 the district of Utah.

15 (14) Two additional bankruptcy judgeships for
16 the middle district of Florida.

17 (15) Two additional bankruptcy judgeships for
18 the southern district of Florida.

19 (16) Two additional bankruptcy judgeships for
20 the northern district of Georgia.

21 (17) One additional bankruptcy judgeship for
22 the southern district of Georgia.

23 **SEC. 1123. TEMPORARY BANKRUPTCY JUDGESHIPS.**

24 (a) AUTHORIZATION FOR ADDITIONAL TEMPORARY
25 BANKRUPTCY JUDGESHIPS.—The following judgeship po-



1 sitions shall be filled in the manner prescribed in section
2 152(a)(1) of title 28, United States Code, for the appoint-
3 ment of bankruptcy judges provided for in section
4 152(a)(2) of such title:

5 (1) One additional bankruptcy judgeship for the
6 district of Puerto Rico.

7 (2) One additional bankruptcy judgeship for the
8 northern district of New York.

9 (3) One additional bankruptcy judgeship for the
10 middle district of Pennsylvania.

11 (4) One additional bankruptcy judgeship for the
12 district of Maryland.

13 (5) One additional bankruptcy judgeship for the
14 northern district of Mississippi.

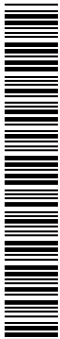
15 (6) One additional bankruptcy judgeship for the
16 southern district of Mississippi.

17 (7) One additional bankruptcy judgeship for the
18 southern district of Georgia.

19 (b) VACANCIES.—

20 (1) IN GENERAL.—The first vacancy occurring
21 in the office of bankruptcy judge in each of the judi-
22 cial districts set forth in subsection (a)—

23 (A) occurring 5 years or more after the ap-
24 pointment date of the bankruptcy judge ap-
25 pointed under subsection (a) to such office; and



1 (B) resulting from the death, retirement,
2 resignation, or removal of a bankruptcy judge;
3 shall not be filled.

4 (2) TERM EXPIRATION.—In the case of a va-
5 cancy resulting from the expiration of the term of a
6 bankruptcy judge not described in paragraph (1),
7 that judge shall be eligible for reappointment as a
8 bankruptcy judge in that district.

9 (c) EXTENSION OF EXISTING TEMPORARY BANK-
10 RUPTCY JUDGESHIPS.—

11 (1) IN GENERAL.—The temporary bankruptcy
12 judgeships authorized for the northern district of
13 Alabama and the eastern district of Tennessee under
14 paragraphs (1) and (9) of section 3(a) of the Bank-
15 ruptcy Judgeship Act of 1992 (28 U.S.C. 152 note)
16 are extended until the first vacancy occurring in the
17 office of a bankruptcy judge in the applicable dis-
18 trict resulting from the death, retirement, resigna-
19 tion, or removal of a bankruptcy judge and occur-
20 ring 5 years or more after the date of enactment of
21 this Act.

22 (2) APPLICABILITY OF OTHER PROVISIONS.—
23 All other provisions of section 3 of the Bankruptcy
24 Judgeship Act of 1992 (28 U.S.C. 152 note) remain



1 applicable to the temporary bankruptcy judgeships
2 referred to in this subsection.

3 **SEC. 1124. TRANSFER OF BANKRUPTCY JUDGESHIP**
4 **SHARED BY THE MIDDLE DISTRICT OF GEOR-**
5 **GIA AND THE SOUTHERN DISTRICT OF GEOR-**
6 **GIA.**

7 The bankruptcy judgeship presently shared by the
8 southern district of Georgia and the middle district of
9 Georgia shall be converted to a bankruptcy judgeship for
10 the middle district of Georgia.

11 **SEC. 1125. CONVERSION OF EXISTING TEMPORARY BANK-**
12 **RUPTCY JUDGESHIPS.**

13 (a) DISTRICT OF DELAWARE.—The temporary bank-
14 ruptcy judgeship authorized for the district of Delaware
15 pursuant to section 3 of the Bankruptcy Judgeship Act
16 of 1992 (28 U.S.C. 152 note), shall be converted to a per-
17 manent bankruptcy judgeship.

18 (b) DISTRICT OF PUERTO RICO.—The temporary
19 bankruptcy judgeship authorized for the district of Puerto
20 Rico pursuant to section 3 of the Bankruptcy Judgeship
21 Act of 1992 (28 U.S.C. 152 note), shall be converted to
22 a permanent bankruptcy judgeship.

23 **SEC. 1126. TECHNICAL AMENDMENTS.**

24 Section 152(a)(2) of title 28, United States Code, is
25 amended—



1 (1) in the item relating to the eastern and west-
2 ern districts of Arkansas, by striking “3” and insert-
3 ing “4”;

4 (2) in the item relating to the district of Dela-
5 ware, by striking “1” and inserting “6”;

6 (3) in the item relating to the middle district of
7 Florida, by striking “8” and inserting “10”;

8 (4) in the item relating to the southern district
9 of Florida, by striking “5” and inserting “7”;

10 (5) in the item relating to the northern district
11 of Georgia, by striking “8” and inserting “10”;

12 (6) in the item relating to the middle district of
13 Georgia, by striking “2” and inserting “3”;

14 (7) in the item relating to the southern district
15 of Georgia, by striking “2” and inserting “3”;

16 (8) in the collective item relating to the middle
17 and southern districts of Georgia, by striking “Mid-
18 dle and Southern 1”;

19 (9) in the item relating to the district of Mary-
20 land, by striking “4” and inserting “7”;

21 (10) in the item relating to the eastern district
22 of Michigan, by striking “4” and inserting “6”;

23 (11) in the item relating to the district of Ne-
24 vada, by striking “3” and inserting 5”;



1 (12) in the item relating to the district of New
2 Jersey, by striking “8” and inserting “9”;

3 (13) in the item relating to the southern district
4 of New York, by striking “9” and inserting “11”;

5 (14) in the item relating to the eastern district
6 of North Carolina, by striking “2” and inserting
7 “3”;

8 (15) in the item relating to the eastern district
9 of Pennsylvania, by striking “5” and inserting “6”;

10 (16) in the item relating to the district of Puer-
11 to Rico, by striking “2 and inserting “3”;

12 (17) in the item relating to the district of South
13 Carolina, by striking “2” and inserting “3”;

14 (18) in the item relating to the western district
15 of Tennessee, by striking “4” and inserting “6”;

16 (19) in the item relating to the district of Utah,
17 by striking “3” and inserting “4”; and

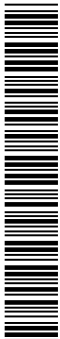
18 (20) in the item relating to the eastern district
19 of Virginia, by striking “5” and inserting “6”.

20 **SEC. 1126. COMPENSATING TRUSTEES.**

21 Section 1326 of title 11, United States Code, is
22 amended—

23 (1) in subsection (b)—

24 (A) in paragraph (1), by striking “and”;



1 (B) in paragraph (2), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(3) if a chapter 7 trustee has been allowed
5 compensation due to the conversion or dismissal of
6 the debtor’s prior case pursuant to section 707(b),
7 and some portion of that compensation remains un-
8 paid in a case converted to this chapter or in the
9 case dismissed under section 707(b) and refiled
10 under this chapter, the amount of any such unpaid
11 compensation, which shall be paid monthly—

12 “(A) by prorating such amount over the
13 remaining duration of the plan; and

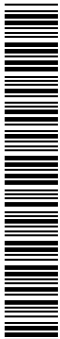
14 “(B) by monthly payments not to exceed
15 the greater of—

16 “(i) \$25; or

17 “(ii) the amount payable to unsecured
18 nonpriority creditors, as provided by the
19 plan, multiplied by 5 percent, and the re-
20 sult divided by the number of months in
21 the plan.”; and

22 (2) by adding at the end the following:

23 “(d) Notwithstanding any other provision of this
24 title—



1 “(1) compensation referred to in subsection
2 (b)(3) is payable and may be collected by the trustee
3 under that paragraph, even if such amount has been
4 discharged in a prior case under this title; and

5 “(2) such compensation is payable in a case
6 under this chapter only to the extent permitted by
7 subsection (b)(3).”.

8 **SEC. 1126. AMENDMENT TO SECTION 362 OF TITLE 11,**
9 **UNITED STATES CODE.**

10 Section 362(b)(18) of title 11, United States Code,
11 is amended to read as follows:

12 “(18) under subsection (a) of the creation or
13 perfection of a statutory lien for an ad valorem
14 property tax, or a special tax or special assessment
15 on real property whether or not ad valorem, imposed
16 by a governmental unit, if such tax or assessment
17 comes due after the date of the filing of the peti-
18 tion;”.

19 **SEC. 1127. JUDICIAL EDUCATION.**

20 The Director of the Federal Judicial Center, in con-
21 sultation with the Director of the Executive Office for
22 United States Trustees, shall develop materials and con-
23 duct such training as may be useful to courts in imple-
24 menting this Act and the amendments made by this Act,
25 including the requirements relating to the means test



1 under section 707(b), and reaffirmation agreements under
2 section 524, of title 11 of the United States Code, as
3 amended by this Act.

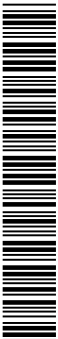
4 **SEC. 1128. RECLAMATION.**

5 (a) RIGHTS AND POWERS OF THE TRUSTEE.—Sec-
6 tion 546(c) of title 11, United States Code, is amended
7 to read as follows:

8 “(c)(1) Except as provided in subsection (d) of this
9 section and in section 507(c), and subject to the prior
10 rights of a holder of a security interest in such goods or
11 the proceeds thereof, the rights and powers of the trustee
12 under sections 544(a), 545, 547, and 549 are subject to
13 the right of a seller of goods that has sold goods to the
14 debtor, in the ordinary course of such seller’s business,
15 to reclaim such goods if the debtor has received such goods
16 while insolvent, within 45 days before the date of the com-
17 mencement of a case under this title, but such seller may
18 not reclaim such goods unless such seller demands in writ-
19 ing reclamation of such goods—

20 “(A) not later than 45 days after the date of
21 receipt of such goods by the debtor; or

22 “(B) not later than 20 days after the date of
23 commencement of the case, if the 45-day period ex-
24 pires after the commencement of the case.



1 “(2) If a seller of goods fails to provide notice in the
2 manner described in paragraph (1), the seller still may
3 assert the rights contained in section 503(b)(9).”.

4 (b) ADMINISTRATIVE EXPENSES.—Section 503(b) of
5 title 11, United States Code, as amended by sections 445
6 and 1103, is amended by adding at the end the following:

7 “(9) the value of any goods received by the
8 debtor within 20 days before the date of commence-
9 ment of a case under this title in which the goods
10 have been sold to the debtor in the ordinary course
11 of such debtor’s business.”.

12 **SEC. 1127. PROVIDING REQUESTED TAX DOCUMENTS TO**
13 **THE COURT.**

14 (a) CHAPTER 7 CASES.—The court shall not grant
15 a discharge in the case of an individual who is a debtor
16 in a case under chapter 7 of title 11, United States Code,
17 unless requested tax documents have been provided to the
18 court.

19 (b) CHAPTER 11 AND CHAPTER 13 CASES.—The
20 court shall not confirm a plan of reorganization in the case
21 of an individual under chapter 11 or 13 of title 11, United
22 States Code, unless requested tax documents have been
23 filed with the court.

24 (c) DOCUMENT RETENTION.—The court shall de-
25 stroy documents submitted in support of a bankruptcy



1 claim not sooner than 3 years after the date of the conclu-
2 sion of a case filed by an individual under chapter 7, 11,
3 or 13 of title 11, United States Code. In the event of a
4 pending audit or enforcement action, the court may extend
5 the time for destruction of such requested tax documents.

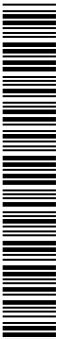
6 (d) The prohibition against the granting of a dis-
7 charge in subsection (a) and the prohibition against the
8 confirmation of a plan of reorganization in subsection (b)
9 shall not apply if the debtor is unable to provide such tax
10 documents due to circumstance beyond the debtor s con-
11 trol including the failure of the taxing authority to provide
12 such documents.

13 **SEC. 1128. ENCOURAGING CREDITWORTHINESS.**

14 (a) SENSE OF THE CONGRESS.—It is the sense of the
15 Congress that—

16 (1) certain lenders may sometimes offer credit
17 to consumers indiscriminately, without taking steps
18 to ensure that consumers are capable of repaying
19 the resulting debt, and in a manner which may en-
20 courage certain consumers to accumulate additional
21 debt; and

22 (2) resulting consumer debt may increasingly be
23 a major contributing factor to consumer insolvency.



1 (b) STUDY REQUIRED.—The Board of Governors of
2 the Federal Reserve System (hereafter in this section re-
3 ferred to as the “Board”) shall conduct a study of—

4 (1) consumer credit industry practices of solie-
5 iting and extending credit—

6 (A) indiscriminately;

7 (B) without taking steps to ensure that
8 consumers are capable of repaying the resulting
9 debt; and

10 (C) in a manner that encourages con-
11 sumers to accumulate additional debt; and

12 (2) the effects of such practices on consumer
13 debt and insolvency.

14 (c) REPORT AND REGULATIONS.—Not later than 12
15 months after the date of enactment of this Act, the
16 Board—

17 (1) shall make public a report on its findings
18 with respect to the indiscriminate solicitation and
19 extension of credit by the credit industry;

20 (2) may issue regulations that would require
21 additional disclosures to consumers; and

22 (3) may take any other actions, consistent with
23 its existing statutory authority, that the Board finds
24 necessary to ensure responsible industrywide prac-



1 tices and to prevent resulting consumer debt and in-
2 solvency.

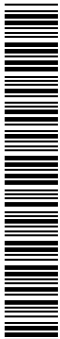
3 **SEC. 1129. TRUSTEES.**

4 (a) SUSPENSION AND TERMINATION OF PANEL
5 TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of
6 title 28, United States Code, is amended—

7 (1) by inserting “(1)” after “(d)”; and

8 (2) by adding at the end the following:

9 “(2) A trustee whose appointment under subsection
10 (a)(1) or under subsection (b) is terminated or who ceases
11 to be assigned to cases filed under title 11, United States
12 Code, may obtain judicial review of the final agency deci-
13 sion by commencing an action in the district court of the
14 United States for the district for which the panel to which
15 the trustee is appointed under subsection (a)(1), or in the
16 district court of the United States for the district in which
17 the trustee is appointed under subsection (b) resides, after
18 first exhausting all available administrative remedies,
19 which if the trustee so elects, shall also include an admin-
20 istrative hearing on the record. Unless the trustee elects
21 to have an administrative hearing on the record, the trust-
22 ee shall be deemed to have exhausted all administrative
23 remedies for purposes of this paragraph if the agency fails
24 to make a final agency decision within 90 days after the
25 trustee requests administrative remedies. The Attorney



1 General shall prescribe procedures to implement this para-
2 graph. The decision of the agency shall be affirmed by
3 the district court unless it is unreasonable and without
4 cause based on the administrative record before the agen-
5 cy.”.

6 (b) EXPENSES OF STANDING TRUSTEES.—Section
7 586(e) of title 28, United States Code, is amended by add-
8 ing at the end the following:

9 “(3) After first exhausting all available administra-
10 tive remedies, an individual appointed under subsection
11 (b) may obtain judicial review of final agency action to
12 deny a claim of actual, necessary expenses under this sub-
13 section by commencing an action in the district court of
14 the United States for the district where the individual re-
15 sides. The decision of the agency shall be affirmed by the
16 district court unless it is unreasonable and without cause
17 based upon the administrative record before the agency.

18 “(4) The Attorney General shall prescribe procedures
19 to implement this subsection.”.

20 **SEC. 1131. BANKRUPTCY FORMS.**

21 Section 2075 of title 28, United States Code, is
22 amended by adding at the end the following:

23 “The bankruptcy rules promulgated under this sec-
24 tion shall prescribe a form for the statement required



1 under section 707(b)(2)(C) of title 11 and may provide
2 general rules on the content of such statement.”.

3 **SEC. 1133. DIRECT APPEALS OF BANKRUPTCY MATTERS TO**
4 **COURTS OF APPEALS.**

5 (a) APPEALS.—Section 158 of title 28, United States
6 Code, is amended—

7 (1) in subsection (c)(1), by striking “Subject to
8 subsection (b),” and inserting “Subject to sub-
9 sections (b) and (d)(2),”; and

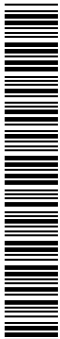
10 (2) in subsection (d)—

11 (A) by inserting “(1)” after “(d)”; and

12 (B) by adding at the end the following:

13 “(2)(A) The appropriate court of appeals shall have
14 jurisdiction of appeals described in the first sentence of
15 subsection (a) if the bankruptcy court, the district court,
16 or the bankruptcy appellate panel involved, acting on its
17 own motion or on the request of a party to the judgment,
18 order, or decree described in such first sentence, or all the
19 appellants and appellees (if any) acting jointly, certify
20 that—

21 “(i) the judgment, order, or decree involves a
22 question of law as to which there is no controlling
23 decision of the court of appeals for the circuit or of
24 the Supreme Court of the United States, or involves
25 a matter of public importance;



1 “(ii) the judgment, order, or decree involves a
2 question of law requiring resolution of conflicting de-
3 cisions; or

4 “(iii) an immediate appeal from the judgment,
5 order, or decree may materially advance the progress
6 of the case or proceeding in which the appeal is
7 taken;

8 and if the court of appeals authorizes the direct appeal
9 of the judgment, order, or decree.

10 “(B) If the bankruptcy court, the district court, or
11 the bankruptcy appellate panel—

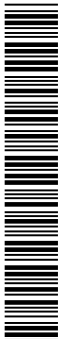
12 “(i) on its own motion or on the request of a
13 party, determines that a circumstance specified in
14 clause (i), (ii), or (iii) of subparagraph (A) exists; or

15 “(ii) receives a request made by a majority of
16 the appellants and a majority of appellees (if any)
17 to make the certification described in subparagraph
18 (A);

19 then the bankruptcy court, the district court, or the bank-
20 ruptcy appellate panel shall make the certification de-
21 scribed in subparagraph (A).

22 “(C) The parties may supplement the certification
23 with a short statement of the basis for the certification.

24 “(D) An appeal under this paragraph does not stay
25 any proceeding of the bankruptcy court, the district court,



1 or the bankruptcy appellate panel from which the appeal
2 is taken, unless the respective bankruptcy court, district
3 court, or bankruptcy appellate panel, or the court of ap-
4 peals in which the appeal is pending, issues a stay of such
5 proceeding pending the appeal.

6 “(E) Any request under subparagraph (B) for certifi-
7 cation shall be made not later than 60 days after the entry
8 of the judgment, order, or decree.”.

9 (b) PROCEDURAL RULES.—

10 (1) TEMPORARY APPLICATION.—A provision of
11 this subsection shall apply to appeals under section
12 158(d)(2) of title 28, United States Code, until a
13 rule of practice and procedure relating to such provi-
14 sion and such appeals is promulgated or amended
15 under chapter 131 of such title.

16 (2) CERTIFICATION.—A district court, a bank-
17 ruptcy court, or a bankruptcy appellate panel may
18 make a certification under section 158(d)(2) of title
19 28, United States Code, only with respect to matters
20 pending in the respective bankruptcy court, district
21 court, or bankruptcy appellate panel.

22 (3) PROCEDURE.—Subject to any other provi-
23 sion of this subsection, an appeal authorized by the
24 court of appeals under section 158(d)(2)(A) of title
25 28, United States Code, shall be taken in the man-



1 ner prescribed in subdivisions (a)(1), (b), (c), and
2 (d) of rule 5 of the Federal Rules of Appellate Pro-
3 cedure. For purposes of subdivision (a)(1) of rule
4 5—

5 (A) a reference in such subdivision to a
6 district court shall be deemed to include a ref-
7 erence to a bankruptcy court and a bankruptcy
8 appellate panel, as appropriate; and

9 (B) a reference in such subdivision to the
10 parties requesting permission to appeal to be
11 served with the petition shall be deemed to in-
12 clude a reference to the parties to the judg-
13 ment, order, or decree from which the appeal is
14 taken.

15 (4) FILING OF PETITION WITH ATTACHMENT.—
16 A petition requesting permission to appeal, that is
17 based on a certification made under subparagraph
18 (A) or (B) of section 158(d)(2) shall—

19 (A) be filed with the circuit clerk not later
20 than 10 days after the certification is entered
21 on the docket of the bankruptcy court, the dis-
22 trict court, or the bankruptcy appellate panel
23 from which the appeal is taken; and

24 (B) have attached a copy of such certifi-
25 cation.



1 (5) REFERENCES IN RULE 5.—For purposes of
2 rule 5 of the Federal Rules of Appellate
3 Procedure—

4 (A) a reference in such rule to a district
5 court shall be deemed to include a reference to
6 a bankruptcy court and to a bankruptcy appel-
7 late panel; and

8 (B) a reference in such rule to a district
9 clerk shall be deemed to include a reference to
10 a clerk of a bankruptcy court and to a clerk of
11 a bankruptcy appellate panel.

12 (6) APPLICATION OF RULES.—The Federal
13 Rules of Appellate Procedure shall apply in the
14 courts of appeals with respect to appeals authorized
15 under section 158(d)(2)(A), to the extent relevant
16 and as if such appeals were taken from final judg-
17 ments, orders, or decrees of the district courts or
18 bankruptcy appellate panels exercising appellate ju-
19 risdiction under subsection (a) or (b) of section 158
20 of title 28, United States Code.

21 **SEC. 1134. INVOLUNTARY CASES.**

22 (a) AMENDMENTS.—Section 303 of title 11, United
23 States Code, is amended—

24 (1) in subsection (b)(1), by—



1 (A) inserting “as to liability or amount”
2 after “bona fide dispute”; and

3 (B) striking “if such claims” and inserting
4 “if such noncontingent, undisputed claims”;
5 and

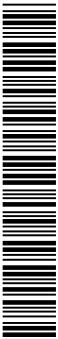
6 (2) in subsection (h)(1), by inserting “as to li-
7 ability or amount” before the semicolon at the end.

8 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
9 MENTS.—This section and the amendments made by this
10 section shall take effect on the date of the enactment of
11 this Act and shall not apply with respect to cases com-
12 menced under title 11 of the United States Code before
13 such date.

14 **SEC. 1135. FEDERAL ELECTION LAW FINES AND PENALTIES**
15 **AS NONDISCHARGEABLE DEBT.**

16 Section 523(a) of title 11, United States Code, as
17 amended by section 314, is amended by inserting after
18 paragraph (14A) the following:

19 “(14B) incurred to pay fines or penalties im-
20 posed under Federal election law;”.



1 **TITLE XIII—CONSUMER CREDIT**
2 **DISCLOSURE**

3 **SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END**
4 **CREDIT PLAN.**

5 (a) AMENDMENTS TO THE TRUTH IN LENDING
6 ACT.—

7 (1) ENHANCED DISCLOSURE OF REPAYMENT
8 TERMS.—

9 (A) IN GENERAL.—Section 127(b) of the
10 Truth in Lending Act (15 U.S.C. 1637(b)) is
11 amended by adding at the end the following:

12 “(11)(A) In a clear and conspicuous manner,
13 repayment information that would apply to the out-
14 standing balance of the consumer under the credit
15 plan, including—

16 “(i) the required minimum monthly pay-
17 ment on that balance, represented as both a
18 dollar figure and a percentage of that balance;

19 “(ii) the number of months (rounded to
20 the nearest month) that it would take to pay
21 the entire amount of that current balance if the
22 consumer pays only the required minimum
23 monthly payments and if no further advances
24 are made;



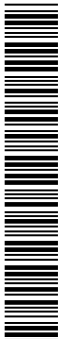
1 “(iii) the total cost to the consumer, in-
2 cluding interest and principal payments, of pay-
3 ing that balance in full if the consumer pays
4 only the required minimum monthly payments
5 and if no further advances are made; and

6 “(iv) the following statement: ‘If your cur-
7 rent rate is a temporary introductory rate, your
8 total costs may be higher.’.

9 “(B) In making the disclosures under subpara-
10 graph (A) the creditor shall apply the annual inter-
11 est rate that applies to that balance with respect to
12 the current billing cycle for that consumer in effect
13 on the date on which the disclosure is made.”.

14 (B) PUBLICATION OF MODEL FORMS.—Not
15 later than 180 days after the date of enactment
16 of this Act, the Board of Governors of the Fed-
17 eral Reserve System shall publish model disclo-
18 sure forms in accordance with section 195 of
19 the Truth in Lending Act for the purpose of
20 compliance with section 127(b)(11) of the
21 Truth in Lending Act, as added by this para-
22 graph.

23 (C) CIVIL LIABILITY.—Section 130(a) of
24 the Truth in Lending Act (15 U.S.C. 1640(a))
25 is amended, in the undesignated paragraph fol-



1 lowing paragraph (4), by striking the second
2 sentence and inserting the following: “In con-
3 nection with the disclosures referred to in sub-
4 sections (a) and (b) of section 1637 of this title,
5 a creditor shall have a liability determined
6 under paragraph (2) only for failing to comply
7 with the requirements of section 1635, 1637(a),
8 or of paragraph (4), (5), (6), (7), (8), (9), (10),
9 or (11) of section 1637(b) or for failing to com-
10 ply with disclosure requirements under State
11 law for any term or item that the Board has
12 determined to be substantially the same in
13 meaning under section 1610(a)(2) as any of the
14 terms or items referred to in section 1637(a),
15 paragraph (4), (5), (6), (7), (8), (9), (10), or
16 (11) of section 1637(b) of this title.”.

17 (2) DISCLOSURES IN CONNECTION WITH SO-
18 LICITATIONS.—

19 (A) IN GENERAL.—Section 127(c)(1)(B) of
20 the Truth in Lending Act (15 U.S.C.
21 1637(c)(1)(B)) is amended by adding the fol-
22 lowing:

23 “(iv) CREDIT WORKSHEET.—An easily
24 understandable credit worksheet designed
25 to aid consumers in determining their abil-



1 ity to assume more debt, including consid-
2 eration of the personal expenses of the con-
3 sumer and a simple formula for the con-
4 sumer to determine whether the assump-
5 tion of additional debt is advisable.

6 “(v) BASIS OF PREAPPROVAL.—In
7 any case in which the application or solici-
8 tation states that the consumer has been
9 preapproved for an account under an open
10 end consumer credit plan, the following
11 statement must appear in a clear and con-
12 spicuous manner: ‘Your preapproval for
13 this credit card does not mean that we
14 have reviewed your individual financial cir-
15 cumstances. You should review your own
16 budget before accepting this offer of cred-
17 it.’.

18 “(vi) AVAILABILITY OF CREDIT RE-
19 PORT.—That the consumer is entitled to a
20 copy of his or her credit report in accord-
21 ance with the Fair Credit Reporting Act.”.

22 (B) PUBLICATION OF MODEL FORMS.—Not
23 later than 180 days after the date of enactment
24 of this Act, the Board of Governors of the Fed-
25 eral Reserve System shall publish model dislo-



1 sure forms in accordance with section 195 of
2 the Truth in Lending Act for the purpose of
3 compliance with section 127(c)(1)(B) of the
4 Truth in Lending Act, as amended by this
5 paragraph.

6 (b) EFFECTIVE DATE.—The provisions of this sec-
7 tion shall apply with respect to cases commenced under
8 title 11, United States Code, on or after the date of the
9 enactment of this Act.

10 **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**
11 **SIONS SECURED BY A DWELLING.**

12 (a) OPEN END CREDIT EXTENSIONS.—

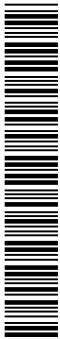
13 (1) CREDIT APPLICATIONS.—Section
14 127A(a)(13) of the Truth in Lending Act (15
15 U.S.C. 1637a(a)(13)) is amended—

16 (A) by striking “CONSULTATION OF TAX
17 ADVISER.—A statement that the” and inserting
18 the following: “TAX DEDUCTIBILITY.—A state-
19 ment that—

20 “(A) the”; and

21 (B) by striking the period at the end and
22 inserting the following: “; and

23 “(B) in any case in which the extension of
24 credit exceeds the fair market value (as defined
25 under the Internal Revenue Code of 1986) of



1 the dwelling, the interest on the portion of the
2 credit extension that is greater than the fair
3 market value of the dwelling is not tax deduct-
4 ible for Federal income tax purposes.”.

5 (2) CREDIT ADVERTISEMENTS.—Section 147(b)
6 of the Truth in Lending Act (15 U.S.C. 1665b(b))
7 is amended—

8 (A) by striking “If any” and inserting the
9 following:

10 “(1) IN GENERAL.—If any”; and

11 (B) by adding at the end the following:

12 “(2) CREDIT IN EXCESS OF FAIR MARKET
13 VALUE.—Each advertisement described in subsection
14 (a) that relates to an extension of credit that may
15 exceed the fair market value of the dwelling, and
16 which advertisement is disseminated in paper form
17 to the public or through the Internet, as opposed to
18 by radio or television, shall include a clear and con-
19 spicuous statement that—

20 “(A) the interest on the portion of the
21 credit extension that is greater than the fair
22 market value of the dwelling is not tax deduct-
23 ible for Federal income tax purposes; and



1 “(B) the consumer should consult a tax
2 adviser for further information regarding the
3 deductibility of interest and charges.”.

4 (b) NON-OPEN END CREDIT EXTENSIONS.—

5 (1) CREDIT APPLICATIONS.—Section 128 of the
6 Truth in Lending Act (15 U.S.C. 1638) is
7 amended—

8 (A) in subsection (a), by adding at the end
9 the following:

10 “(15) In the case of a consumer credit trans-
11 action that is secured by the principal dwelling of
12 the consumer, in which the extension of credit may
13 exceed the fair market value of the dwelling, a clear
14 and conspicuous statement that—

15 “(A) the interest on the portion of the
16 credit extension that is greater than the fair
17 market value of the dwelling is not tax deduct-
18 ible for Federal income tax purposes; and

19 “(B) the consumer should consult a tax
20 adviser for further information regarding the
21 deductibility of interest and charges.”; and

22 (B) in subsection (b), by adding at the end
23 the following:

24 “(3) In the case of a credit transaction described in
25 paragraph (15) of subsection (a), disclosures required by



1 that paragraph shall be made to the consumer at the time
2 of application for such extension of credit.”.

3 (2) CREDIT ADVERTISEMENTS.—Section 144 of
4 the Truth in Lending Act (15 U.S.C. 1664) is
5 amended by adding at the end the following:

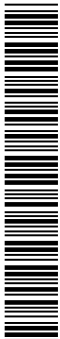
6 “(e) Each advertisement to which this section applies
7 that relates to a consumer credit transaction that is se-
8 cured by the principal dwelling of a consumer in which
9 the extension of credit may exceed the fair market value
10 of the dwelling, and which advertisement is disseminated
11 in paper form to the public or through the Internet, as
12 opposed to by radio or television, shall clearly and con-
13 spicuously state that—

14 “(1) the interest on the portion of the credit ex-
15 tension that is greater than the fair market value of
16 the dwelling is not tax deductible for Federal income
17 tax purposes; and

18 “(2) the consumer should consult a tax adviser
19 for further information regarding the deductibility of
20 interest and charges.”.

21 (c) REGULATORY IMPLEMENTATION.—

22 (1) IN GENERAL.—The Board shall promulgate
23 regulations implementing the amendments made by
24 this section.



1 (2) EFFECTIVE DATE.—Regulations issued
2 under paragraph (1) shall not take effect until the
3 later of—

4 (A) 12 months after the date of enactment
5 of this Act; or

6 (B) 12 months after the date of publica-
7 tion of such final regulations by the Board.

8 **SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY**
9 **RATES”.**

10 (a) INTRODUCTORY RATE DISCLOSURES.—Section
11 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c))
12 is amended by adding at the end the following:

13 “(6) ADDITIONAL NOTICE CONCERNING ‘INTRO-
14 DUCTORY RATES’.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), an application or solicitation
17 to open a credit card account and all pro-
18 motional materials accompanying such applica-
19 tion or solicitation for which a disclosure is re-
20 quired under paragraph (1), and that offers a
21 temporary annual percentage rate of interest,
22 shall—

23 “(i) use the term ‘introductory’ in im-
24 mediate proximity to each listing of the
25 temporary annual percentage rate applica-



1 ble to such account, which term shall ap-
2 pear clearly and conspicuously;

3 “(ii) if the annual percentage rate of
4 interest that will apply after the end of the
5 temporary rate period will be a fixed rate,
6 state in a clear and conspicuous manner in
7 a prominent location closely proximate to
8 the first listing of the temporary annual
9 percentage rate (other than a listing of the
10 temporary annual percentage rate in the
11 tabular format described in section
12 122(c)), the time period in which the intro-
13 ductory period will end and the annual
14 percentage rate that will apply after the
15 end of the introductory period; and

16 “(iii) if the annual percentage rate
17 that will apply after the end of the tem-
18 porary rate period will vary in accordance
19 with an index, state in a clear and con-
20 spicuous manner in a prominent location
21 closely proximate to the first listing of the
22 temporary annual percentage rate (other
23 than a listing in the tabular format pre-
24 scribed by section 122(c)), the time period
25 in which the introductory period will end



1 and the rate that will apply after that,
2 based on an annual percentage rate that
3 was in effect within 60 days before the
4 date of mailing the application or solicita-
5 tion.

6 “(B) EXCEPTION.—Clauses (ii) and (iii) of
7 subparagraph (A) do not apply with respect to
8 any listing of a temporary annual percentage
9 rate on an envelope or other enclosure in which
10 an application or solicitation to open a credit
11 card account is mailed.

12 “(C) CONDITIONS FOR INTRODUCTORY
13 RATES.—An application or solicitation to open
14 a credit card account for which a disclosure is
15 required under paragraph (1), and that offers a
16 temporary annual percentage rate of interest
17 shall, if that rate of interest is revocable under
18 any circumstance or upon any event, clearly
19 and conspicuously disclose, in a prominent man-
20 ner on or with such application or solicitation—

21 “(i) a general description of the cir-
22 cumstances that may result in the revoca-
23 tion of the temporary annual percentage
24 rate; and



1 “(ii) if the annual percentage rate
2 that will apply upon the revocation of the
3 temporary annual percentage rate—

4 “(I) will be a fixed rate, the an-
5 nual percentage rate that will apply
6 upon the revocation of the temporary
7 annual percentage rate; or

8 “(II) will vary in accordance with
9 an index, the rate that will apply after
10 the temporary rate, based on an an-
11 nual percentage rate that was in ef-
12 fect within 60 days before the date of
13 mailing the application or solicitation.

14 “(D) DEFINITIONS.—In this paragraph—

15 “(i) the terms ‘temporary annual per-
16 centage rate of interest’ and ‘temporary
17 annual percentage rate’ mean any rate of
18 interest applicable to a credit card account
19 for an introductory period of less than 1
20 year, if that rate is less than an annual
21 percentage rate that was in effect within
22 60 days before the date of mailing the ap-
23 plication or solicitation; and

24 “(ii) the term ‘introductory period’
25 means the maximum time period for which



1 the temporary annual percentage rate may
2 be applicable.

3 “(E) RELATION TO OTHER DISCLOSURE
4 REQUIREMENTS.—Nothing in this paragraph
5 may be construed to supersede subsection (a) of
6 section 122, or any disclosure required by para-
7 graph (1) or any other provision of this sub-
8 section.”.

9 (b) REGULATORY IMPLEMENTATION.—

10 (1) IN GENERAL.—The Board shall promulgate
11 regulations implementing the requirements of section
12 127(c)(6) of the Truth in Lending Act, as added by
13 this section.

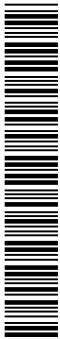
14 (2) EFFECTIVE DATE.—Section 127(c)(6) of
15 the Truth in Lending Act, as added by this section,
16 and regulations issued under paragraph (1) of this
17 subsection shall not take effect until the later of—

18 (A) 12 months after the date of enactment
19 of this Act; or

20 (B) 12 months after the date of publica-
21 tion of such final regulations by the Board.

22 **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

23 (a) INTERNET-BASED SOLICITATIONS.—Section
24 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c))
25 is amended by adding at the end the following:



1 “(7) INTERNET-BASED SOLICITATIONS.—

2 “(A) IN GENERAL.—In any solicitation to
3 open a credit card account for any person under
4 an open end consumer credit plan using the
5 Internet or other interactive computer service,
6 the person making the solicitation shall clearly
7 and conspicuously disclose—

8 “(i) the information described in sub-
9 paragraphs (A) and (B) of paragraph (1);
10 and

11 “(ii) the information described in
12 paragraph (6).

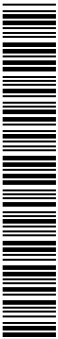
13 “(B) FORM OF DISCLOSURE.—The disclo-
14 sures required by subparagraph (A) shall be—

15 “(i) readily accessible to consumers in
16 close proximity to the solicitation to open
17 a credit card account; and

18 “(ii) updated regularly to reflect the
19 current policies, terms, and fee amounts
20 applicable to the credit card account.

21 “(C) DEFINITIONS.—For purposes of this
22 paragraph—

23 “(i) the term ‘Internet’ means the
24 international computer network of both



1 Federal and non-Federal interoperable
2 packet switched data networks; and

3 “(ii) the term ‘interactive computer
4 service’ means any information service,
5 system, or access software provider that
6 provides or enables computer access by
7 multiple users to a computer server, in-
8 cluding specifically a service or system that
9 provides access to the Internet and such
10 systems operated or services offered by li-
11 braries or educational institutions.”.

12 (b) REGULATORY IMPLEMENTATION.—

13 (1) IN GENERAL.—The Board shall promulgate
14 regulations implementing the requirements of section
15 127(c)(7) of the Truth in Lending Act, as added by
16 this section.

17 (2) EFFECTIVE DATE.—The amendment made
18 by subsection (a) and the regulations issued under
19 paragraph (1) of this subsection shall not take effect
20 until the later of—

21 (A) 12 months after the date of enactment
22 of this Act; or

23 (B) 12 months after the date of publica-
24 tion of such final regulations by the Board.



1 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**
2 **DEADLINES AND PENALTIES.**

3 (a) DISCLOSURES RELATED TO LATE PAYMENT
4 DEADLINES AND PENALTIES.—Section 127(b) of the
5 Truth in Lending Act (15 U.S.C. 1637(b)) is amended
6 by adding at the end the following:

7 “(12) If a late payment fee is to be imposed
8 due to the failure of the obligor to make payment on
9 or before a required payment due date, the following
10 shall be stated clearly and conspicuously on the bill-
11 ing statement:

12 “(A) The date on which that payment is
13 due or, if different, the earliest date on which
14 a late payment fee may be charged.

15 “(B) The amount of the late payment fee
16 to be imposed if payment is made after such
17 date.”.

18 (b) REGULATORY IMPLEMENTATION.—

19 (1) IN GENERAL.—The Board shall promulgate
20 regulations implementing the requirements of section
21 127(b)(12) of the Truth in Lending Act, as added
22 by this section.

23 (2) EFFECTIVE DATE.—The amendment made
24 by subsection (a) and regulations issued under para-
25 graph (1) of this subsection shall not take effect
26 until the later of—



1 (A) 12 months after the date of enactment
2 of this Act; or

3 (B) 12 months after the date of publica-
4 tion of such final regulations by the Board.

5 **SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**
6 **URE TO INCUR FINANCE CHARGES.**

7 (a) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-
8 URE TO INCUR FINANCE CHARGES.—Section 127 of the
9 Truth in Lending Act (15 U.S.C. 1637) is amended by
10 adding at the end the following:

11 “(h) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-
12 URE TO INCUR FINANCE CHARGES.—A creditor of an ac-
13 count under an open end consumer credit plan may not
14 terminate an account prior to its expiration date solely be-
15 cause the consumer has not incurred finance charges on
16 the account. Nothing in this subsection shall prohibit a
17 creditor from terminating an account for inactivity in 3
18 or more consecutive months.”.

19 (b) REGULATORY IMPLEMENTATION.—

20 (1) IN GENERAL.—The Board shall promulgate
21 regulations implementing the requirements of section
22 127(h) of the Truth in Lending Act, as added by
23 this section.

24 (2) EFFECTIVE DATE.—The amendment made
25 by subsection (a) and regulations issued under para-



1 graph (1) of this subsection shall not take effect
2 until the later of—

3 (A) 12 months after the date of enactment
4 of this Act; or

5 (B) 12 months after the date of publica-
6 tion of such final regulations by the Board.

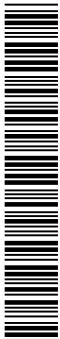
7 **SEC. 1307. DUAL USE DEBIT CARD.**

8 (a) REPORT.—The Board may conduct a study of,
9 and present to Congress a report containing its analysis
10 of, consumer protections under existing law to limit the
11 liability of consumers for unauthorized use of a debit card
12 or similar access device. Such report, if submitted, shall
13 include recommendations for legislative initiatives, if any,
14 of the Board, based on its findings.

15 (b) CONSIDERATIONS.—In preparing a report under
16 subsection (a), the Board may include—

17 (1) the extent to which section 909 of the Elec-
18 tronic Fund Transfer Act (15 U.S.C. 1693g), as in
19 effect at the time of the report, and the imple-
20 menting regulations promulgated by the Board to
21 carry out that section provide adequate unauthorized
22 use liability protection for consumers;

23 (2) the extent to which any voluntary industry
24 rules have enhanced or may enhance the level of pro-



1 tection afforded consumers in connection with such
2 unauthorized use liability; and

3 (3) whether amendments to the Electronic
4 Fund Transfer Act (15 U.S.C. 1693 et seq.), or re-
5 visions to regulations promulgated by the Board to
6 carry out that Act, are necessary to further address
7 adequate protection for consumers concerning unau-
8 thorized use liability.

9 **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**
10 **TENDED TO DEPENDENT STUDENTS.**

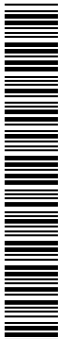
11 (a) STUDY.—

12 (1) IN GENERAL.—The Board shall conduct a
13 study regarding the impact that the extension of
14 credit described in paragraph (2) has on the rate of
15 cases filed under title 11 of the United States Code.

16 (2) EXTENSION OF CREDIT.—The extension of
17 credit described in this paragraph is the extension of
18 credit to individuals who are—

19 (A) claimed as dependents for purposes of
20 the Internal Revenue Code of 1986; and

21 (B) enrolled within 1 year of successfully
22 completing all required secondary education re-
23 quirements and on a full-time basis, in postsec-
24 ondary educational institutions.



1 (b) REPORT.—Not later than 1 year after the date
2 of enactment of this Act, the Board shall submit to the
3 Senate and the House of Representatives a report summa-
4 rizing the results of the study conducted under subsection
5 (a).

6 **SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

7 (a) REGULATIONS.—Not later than 6 months after
8 the date of enactment of this Act, the Board, in consulta-
9 tion with the other Federal banking agencies (as defined
10 in section 3 of the Federal Deposit Insurance Act), the
11 National Credit Union Administration Board, and the
12 Federal Trade Commission, shall promulgate regulations
13 to provide guidance regarding the meaning of the term
14 “clear and conspicuous”, as used in subparagraphs (A),
15 (B), and (C) of section 127(b)(11) and clauses (ii) and
16 (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

17 (b) EXAMPLES.—Regulations promulgated under
18 subsection (a) shall include examples of clear and con-
19 spicuous model disclosures for the purposes of disclosures
20 required by the provisions of the Truth in Lending Act
21 referred to in subsection (a).

22 (c) STANDARDS.—In promulgating regulations under
23 this section, the Board shall ensure that the clear and con-
24 spicuous standard required for disclosures made under the
25 provisions of the Truth in Lending Act referred to in sub-



1 section (a) can be implemented in a manner which results
2 in disclosures which are reasonably understandable and
3 designed to call attention to the nature and significance
4 of the information in the notice.

5 **SEC. 1310. ISSUANCE OF CREDIT CARDS TO UNDERAGE**
6 **CONSUMERS.**

7 Section 127(c) of the Truth in Lending Act (15
8 U.S.C. 1637(c)) is amended by inserting after paragraph
9 (6) (as added by section 1303 of this title) the following
10 new paragraph:

11 “(7) APPLICATIONS FROM UNDERAGE CON-
12 SUMERS.—

13 “(A) PROHIBITION ON ISSUANCE.—No
14 credit card may be issued to, or open end credit
15 plan established on behalf of, any consumer
16 who has not attained the age of 21, except in
17 response to a written request or application to
18 the card issuer that meets the requirements of
19 subparagraph (B).

20 “(B) APPLICATION REQUIREMENTS.—An
21 application to open a credit card account by a
22 consumer who has not reached the age of 21 as
23 of the date of submission of the application
24 shall require—



1 “(i) the signature of the parent or
2 guardian of the consumer indicating joint
3 liability for debts incurred by the consumer
4 in connection with the account before the
5 consumer has reached the age of 21; or

6 “(ii) submission by the consumer of
7 financial information indicating an inde-
8 pendent means of repaying any obligation
9 arising from the proposed extension of
10 credit in connection with the account.”.

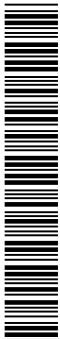
11 **TITLE XIV—GENERAL EFFEC-**
12 **TIVE DATE; APPLICATION OF**
13 **AMENDMENTS**

14 **SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMEND-**
15 **MENTS.**

16 (a) EFFECTIVE DATE.—Except as otherwise provided
17 in this Act, this Act and the amendments made by this
18 Act shall take effect 180 days after the date of enactment
19 of this Act.

20 (b) APPLICATION OF AMENDMENTS.—

21 (1) IN GENERAL.—Except as otherwise pro-
22 vided in this Act and paragraph (2), the amend-
23 ments made by this Act shall not apply with respect
24 to cases commenced under title 11, United States
25 Code, before the effective date of this Act.



1 (2) CERTAIN LIMITATIONS APPLICABLE TO DEBT-
2 ORS.—The amendments made by sections 308, 322,
3 and 330 shall apply with respect to cases com-
4 menced under title 11, United States Code, on or
5 after the date of the enactment of this Act.

